

**ORDER OF THE STATE BOARD OF PHARMACY**

(Docket No. D-021016-019)

In The Matter Of:

**ROBERT C. HERSHBINE, R.Ph.**

1930 George Drive  
Brunswick, Ohio, Ohio 44212  
(R.Ph. No. 03-1-24680)

**INTRODUCTION**

THE MATTER OF ROBERT C. HERSHBINE CAME FOR HEARING ON AUGUST 4, 2003, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT P. GIACALONE., R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; GREGORY BRAYLOCK, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

ROBERT C. HERSHBINE WAS REPRESENTED BY PAUL T. KIRNER AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

**SUMMARY OF EVIDENCE**

**State's Witnesses**

1. Lynn Mudra, Ohio State Board of Pharmacy

**Respondent's Witnesses**

1. Robert C. Hershbine, R.Ph., Respondent
2. Michelle Czerniak, R.Ph.

**State's Exhibits**

1. Copy of Summary Suspension Order/Notice of Opportunity For Hearing letter [10-16-02]  
1A-1D. Procedurals
- 1E. Copy of Addendum Notice [02-19-03]
- 1F. Procedural
2. Parma Heights Police Incident Report #02-10788 [09-10-02]
3. Parma Heights Police Department Confession Statement [09-10-02]; Case Update Report [09-11-02]
4. Photocopy of drugs #0210788 [09-10-02]
5. Cuyahoga County Coroner Toxicology Laboratory Report [09-11-02]
6. Docket Record, City of Parma vs. Robert C. Hershbine, Case No. 02CRA02895-1-1, Parma Municipal Court [09-11-02 to 02-03-03]
7. Docket Record, City of Parma vs. Robert C. Hershbine, Case No. 02TRC06767-1-2, Parma Municipal Court [11-26-02 to 01-13-03]
8. Copy of letter from Richard Kolezynski, R.Ph. [09-12-02]; DEA Report of Theft or Loss of Controlled Substances [09-12-02]

Respondent's Exhibits

- A. PRO Pharmacist's Recovery Contract for Robert Hershbine [11-13-02]
- B. Drug Screen Reports [11-13-02 and 12-30-02]
- C. Support Group Attendance Records [11-4-02 to 07-18-03]
- D. Calendar Pages Showing Chronology of Treatment and Rehabilitation [October 2002 to July 2003]
- E. Copy of Glenbeigh Discharge Plan [10-03-02]
- F. Copy of Glenbeigh Certificate of Completion [11-14-02]
- G. Copy of Glenbeigh Progress Reports [11-08-02 to 07-03-03]
- H. Copy of letter from Ruthanne Anderson, MA, LPCC-CCDCIIE [07-14-03]
- I-P. Copies of eight letters of support [02-12-03 to 07-20-03]
- Q. Docket Record, City of Parma vs. Robert C. Hershbine, Case No. 02CRA02895-1-1, Parma Municipal Court [09-11-02 to 02-03-03]; Docket Record, City of Parma vs. Robert C. Hershbine, Case No. 02TRC06767-1-2, Parma Municipal Court [11-26-02 to 01-13-03]
- R. Copy of letter from R. Discenza [07-21-03]
- S. Copy of ten pages of Continuing Pharmacy Education Attendance Certificates [02-10-02 to 04-27-03]
- T1-T2. Copy of letter from Bradford H. Price, Ph.D., CCDCIII-E [07-30-03]; Copy of fax cover sheet from Thom Walter, Glenbeigh Center of Rocky River [07-31-03]
- U1-U6. Copy of Glenbeigh Hospital Biopsychosocial Assessment Report for Robert Hershbine [10-03-02]
- V1-V2. Copy of Glenbeigh Physician Progress Note [10-04-02]
- W1-W2. Copy of Glenbeigh Hospital Discharge Summary [11-03-02]
- X. Licensee Summary Report of Drug Screens for Robert Hershbine [01-16-03 to 07-28-03]

FINDINGS OF FACT

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

- (1) Records of the State Board of Pharmacy indicate that Robert C. Hershbine was originally licensed by the State of Ohio as a pharmacist on June 21, 2001, and that his license to practice pharmacy in Ohio was summarily suspended effective October 16, 2002.
- (2) Robert C. Hershbine is addicted to liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Robert C. Hershbine admitted to a Board agent that he is addicted to drugs. Such conduct indicates that Robert C. Hershbine falls within the ambit of Sections 3719.121 and 4729.16(A)(3) of the Ohio Revised Code.
- (3) On September 10, 2002, Robert C. Hershbine was involved in a motor vehicle accident and was arrested for driving under the influence of alcohol and/or drugs of abuse in violation of Section 4511.19 of the Ohio Revised Code.

(4) Robert C. Hershbine did, on or about September 10, 2002, knowingly possess or use a controlled substance when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: while conducting an inventory of Robert C. Hershbine's vehicle, a police officer found seventy-four Adipex-P tablets, and fourteen partial Adipex tablets. Such conduct violates Section 2925.11 of the Ohio Revised Code.

(5) Robert C. Hershbine did, on or about September 10, 2002, knowingly possess a dangerous drug when not in accordance with Chapters 4729., and 4731. of the Ohio Revised Code, to wit: while conducting an inventory of Robert C. Hershbine's vehicle, a police officer found one Carisoprodol tablet. Such conduct violates Section 4729.51(C) of the Ohio Revised Code

(6) Robert C. Hershbine did, on or about October 3, 2002, and dates prior thereto, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of CVS/pharmacy #3322 by deception, to wit: Robert C. Hershbine admitted to a Board agent that he stole Hydrocodone 5/500, Carisoprodol, and Diazepam. Such conduct violates Section 2913.02 of the Ohio Revised Code.

(7) On December 2, 2002, Robert C. Hershbine pled guilty to Possession of Drugs, a misdemeanor of the third degree under Parma Heights Ordinance 620.03. City of Parma vs. Robert C. Hershbine, Case No. 02CRA02895-1-1, Parma Municipal Court.

(8) On December 2, 2002, Robert C. Hershbine pled guilty to Reckless Operation under Parma Heights Ordinance 333.02, a misdemeanor of the third degree. City of Parma vs. Robert C. Hershbine, Case No. 02TRC06767-1-2, Parma Municipal Court.

#### CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (4) through (8) of the Findings of Fact constitute being guilty of 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 (4) through (6) 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 paragraph (2) of the Findings of Fact constitutes being addicted to or abusing liquor or 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) The State Board of Pharmacy concludes that paragraphs (7) and (8) of the Findings of Fact constitute being convicted of a misdemeanor related to, or committed in, the practice of pharmacy as provided in Division (A)(4) of Section 4729.16 of the Ohio Revised Code.

(5) The State Board of Pharmacy concludes that paragraphs (4) and (5) 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 Chapter 2925. or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

#### DECISION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Robert C. Hershbine on October 16, 2002.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-1-24680, held by Robert C. Hershbine and such suspension is effective as of the date of the mailing of this Order.

(A) Robert C. Hershbine, 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) Robert C. Hershbine, 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.

Further, after November 30, 2004, the Board will consider any petition filed by Robert C. Hershbine 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) Robert C. Hershbine 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) Alcohol must be added to the standard urine drug screen and documentation provided to show inclusion in the test panel. A Breathalyzer may be used to test for alcohol, but the test must be conducted by an appropriately certified individual within twelve hours of notification.

(c) Results of all drug and alcohol 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.

(d) Refusals of urine screens or diluted urine screens are equivalent to a positive result and indicate 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.

(B) Robert C. Hershbine must demonstrate satisfactory proof to the Board that he is no longer addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.

(C) Robert C. Hershbine must provide, at the reinstatement petition hearing, documentation of the following:

(1) Compliance with the contract required above (e.g.-proof of giving the sample within twelve hours of notification and copies of all drug and alcohol screen reports, meeting attendance records, treatment program reports, etc.);

(2) Compliance with the continuing pharmacy education requirements as 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 (i.e.-CEUs must be obtained during the three years immediately preceding the petition hearing);

(3) Compliance with the terms of this Order.

(D) If reinstatement is not accomplished within three years of the effective date of this Order, Robert C. Hershbine must also 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-6/Nay-0).

MOTION CARRIED.

SO ORDERED.

**ORDER EFFECTIVE SEPTEMBER 10, 2003**

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

October 16, 2002

**Robert C. Hershbine, R.Ph.**  
9408 Sherman Lane  
North Royalton, Ohio 44133

Re: Ohio Registered Pharmacist  
Number 03-1-24680

Dear Mr. Hershbine:

In accordance with Section 3719.121(A) of the Ohio Revised Code, the Board has determined that you are addicted to the use of controlled substances. Further, 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 21, 2001, pursuant to examination, and are currently licensed to practice pharmacy in the State of Ohio.
- (2) You are addicted to liquor or drugs or impaired physically or mentally to such a degree as to render you unfit to practice pharmacy, to wit: you admitted to a Board agent that you are addicted to drugs. Such conduct indicates that you fall within the ambit of Sections 3719.121(A), 3719.121(B), and 4729.16(A)(3) of the Ohio Revised Code.
- (3) On September 10, 2002, you were involved in a motor vehicle accident and were arrested for driving under the influence of alcohol and/or drugs of abuse in violation of Section 4511.19 of the Ohio Revised Code. Such conduct constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy and/or addicted or abusing liquor or drugs or impaired physically or mentally to such a degree as to render you unfit to practice pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.
- (4) You did, on or about September 10, 2002, knowingly possess or use a controlled substance when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: while conducting an inventory of your vehicle, a police officer found seventy-four (74) Adipex-P tablets, and fourteen (14) partial Adipex tablets. Such conduct violates Section 2925.11 of the Ohio Revised Code, and if proven constitutes being guilty of a felony or gross immorality and/or willfully violating the provisions of Chapter 2925. of the Ohio Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (5) You did, on or about September 10, 2002, knowingly possess a dangerous drug when not in accordance with Chapters 4729., and 4731. of the Ohio Revised Code, to wit: while conducting an inventory of your vehicle, a police officer found, one Carisoprodol tablet. Such conduct violates Section 4729.51(C) of the Ohio Revised Code, and if proven constitutes being guilty of gross immorality and/or willfully violating the provisions of Chapter 4729. of the Ohio Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (6) You did, on or about October 3, 2002, and dates prior thereto, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of CVS/Pharmacy #3322 by deception, to wit: you admitted to a Board agent that you stole Hydrocodone 5/500, Carisoprodol, and Diazepam. Such conduct violates Section 2913.02 of the Ohio Revised Code, and if proven constitutes being guilty of gross immorality and/or guilty of dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

YOU ARE HEREBY NOTIFIED that Section 3719.121(A) of the Ohio Revised Code states, in pertinent part: “any ... pharmacist, ... who is or becomes addicted to the use of controlled substances, shall be suspended by the board that authorized the person’s license, certificate, or registration...”

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 SECTIONS 3719.121(A) and (B) 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. 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 an adjudicatory hearing has been held pursuant to Chapter 119. of the Revised Code, and a final Order has been issued, 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 30 days of the time of the mailing of this notice, such will be afforded. Such request shall be mailed to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126. 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 FURTHER 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 days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

(D-021016-019)

BY ORDER OF THE STATE BOARD OF PHARMACY

**SUMMARY SUSPENSION EFFECTIVE OCTOBER 16, 2002**

*This remains in effect until an Order is issued by the Board or a Settlement Agreement is signed.  
(Order Effective September 10, 2003)*