STATE BOARD OF PHARMACY

THE STATE BOARD OF PHARMACY

vs

FREDERICK L. ELLISON, R.Ph.

THE MATTER OF FREDERICK L. ELLISON, DOCKET NO. 6-145-1, WAS HEARD PURSUANT TO CHAPTERS 119. AND 4729. OF THE REVISED CODE ON TUESDAY, APRIL 22, 1986. AFTER CONSIDERATION OF THE EVIDENCE ADDUCED, MOTIONS WERE MADE AND RECORDED THAT THE FOLLOWING ORDER BE ADOPTED:

ORDER

Findings Of Fact

(1) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison, as the owner and responsible pharmacist for Ellison Pharmacy, 960 E. 105th Street, Cleveland, Ohio 44108, did make a false material statement in an application for a license as a terminal distributor of dangerous drugs; in that, Mr. Ellison answered "No" to the question as to whether or not the applicant, or any agent or employee of the applicant has ever been charged or convicted of a violation of Section 4729.51 of the Ohio Revised Code; the Federal Food, Drug, and Cosmetic Act; Federal Controlled Substance Act; Ohio's Pure Food, Drug, and Cosmetic Act; or Chapter 2925., 3719., or 4729. of the Ohio Revised Code.

(2) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison was charged with, and found guilty of, violating Section 3715.64(11)(b)(iii) of the Ohio Revised Code on December 14, 1966 by the Cuyahoga County Court of Common Pleas.

(3) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison, as the owner and responsible pharmacist for Ellison Pharmacy, did fail to renew the terminal distributor of dangerous drugs license during the month of December in 1984 (03/25/85) as required by Section 4729.54 of the Ohio Revised Code.

(4) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison, as the owner and responsible pharmacist for Ellison Pharmacy, did fail to renew the terminal distributor of dangerous drugs license during the month of December in 1982 (04/18/83) as required by Section 4729.54 of the Ohio Revised Code.

(5) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison, as the owner and responsible pharmacist for Ellison Pharmacy, did fail to renew the terminal distributor of dangerous drugs license during the month of December in 1981 (02/19/82) as required by Section 4729.54 of the Ohio Revised Code.

(6) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison, as the owner and responsible pharmacist for Ellison Pharmacy, did fail to renew the terminal distributor of dangerous drugs license during the month of December in 1978 (03/04/79) as required by Section 4729.54 of the Ohio Revised Code.

(7) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison failed to renew his pharmacist identification card on the fifteenth day of September, as required by Section 4729.12 of the Ohio Revised Code, in 1984, when he did not apply for renewal until March 25, 1985.

(8) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison failed to renew his pharmacist identification card on the fifteenth day of September, as required by Section 4729.12 of the Ohio Revised Code, in 1978, when he did not apply for renewal until September 26, 1979.

(9) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison failed to renew his pharmacist identification card on the fifteenth day of September, as required by Section 4729.12 of the Ohio Revised Code, in 1975, when he did not apply for renewal until April 1, 1976.

(10) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison, as the owner and responsible pharmacist for Ellison Pharmacy, did purchase for the purpose of resale, possess for sale, or sell, at retail, dangerous drugs while not being licensed as a terminal distributor of dangerous drugs; in violation of Sections 2925.03, 2925.11, and 4729.51 of the Revised Code.

(11) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did dispense and sell dangerous drugs while not being a registered pharmacist during the lapsed dates of his pharmacist license; in violation of the provisions of Section 4729.28 of the Revised Code.

(12) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did dispense and sell, under the exemption of Section 3719.15 of the Revised Code, to a person when he knew, or could by reasonable diligence ascertain, that such dispensing or selling provided the person with more than four grains

of codeine phosphate within 48 consecutive hours, to wit: four ounces of Novahistine DH were dispensed or sold to one Dennis Banks on April 1, 1985 and April 2, 1985. Such conduct is prohibited by Section 3719.16 of the Revised Code.

(13) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did dispense and sell, under the exemption of Section 3719.15 of the Revised Code, to a person when he knew, or could by reasonable diligence ascertain, that such dispensing or selling provided the person with more than four grains of codeine phosphate within 48 consecutive hours, to wit: four ounces of Histadyl EC were dispensed or sold to one James Watts on April 2, 1985 and April 3, 1985. Such conduct is prohibited by Section 3719.16 of the Revised Code.

(14) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did dispense and sell, under the exemption of Section 3719.15 of the Revised Code, to a person when he knew, or could by reasonable diligence ascertain, that such dispensing or selling provided the person with more than four grains of codeine phosphate within 48 consecutive hours, to wit: four ounces of Novahistine DH were dispensed or sold to one Erma Rodgers on April 7, 1985 and April 8, 1985. Such conduct is prohibited by Section 3719.16 of the Revised Code.

(15) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did dispense and sell, under the exemption of Section 3719.15 of the Revised Code, to a person when he knew, or could by reasonable diligence ascertain, that such dispensing or selling provided the person with more than four grains of codeine phosphate within 48 consecutive hours, to wit: four ounces of Robitussin AC were dispensed or sold to one Don Smith on April 15, 1985 and April 16, 1985. Such conduct is prohibited by Section 3719.16 of the Revised Code.

(16) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did dispense and sell, under the exemption of Section 3719.15 of the Revised Code, to a person when he knew, or could by reasonable diligence ascertain, that such dispensing or selling provided the person with more than four grains of codeine phosphate within 48 consecutive hours, to wit: four ounces of Histadyl EC were dispensed or sold to one Don Smith on April 18, 1985 and April 19, 1985. Such conduct is prohibited by Section 3719.16 of the Revised Code.

(17) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did dispense and sell, under the exemption of Section 3719.15 of the Revised Code, to a person when he knew, or could by reasonable diligence ascertain, that such dispensing or selling provided the person with more than four grains

of codeine phosphate within 48 consecutive hours, to wit: four ounces of Robitussin AC were dispensed or sold to one Mildred Silvey on May 6, 1985 and May 7, 1985. Such conduct is prohibited by Section 3719.16 of the Revised Code.

(18) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did dispense and sell, under the exemption of Section 3719.15 of the Revised Code, to a person when he knew, or could by reasonable diligence ascertain, that such dispensing or selling provided the person with more than four grains of codeine phosphate within 48 consecutive hours, to wit: four ounces of Robitussin AC were dispensed or sold to one Dale King on May 18, 1985 and May 18, 1985. Such conduct is prohibited by Section 3719.16 of the Revised Code.

(19) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 34 capsules of ABC Compound No. 3, a Schedule III controlled substance and prescription drug, an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.

(20) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 940 tablets of Adipex-P, a Schedule III controlled substance and prescription drug, an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(7) of the Revised Code.

(21) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 6,216 ounces of Ambenyl Expectorant, a Schedule V controlled substance and prescription drug, an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(7) of the Revised Code.

(22) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 3,463 tablets of Darvocet-N100, a Schedule IV controlled substance and prescription drug, an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(7) of the Revised Code.

(23) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without keeping the records required by Section 3719.07 of the Revised Code, sell approximately 1,244 ounces of Elixir Terpin Hydrate and Codeine, a Schedule V controlled substance, an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Section 3719.15 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(7) of the Revised Code.

(24) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 2,280 tablets of Empracet #4, a Schedule IV controlled substance and prescription drug, an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(7) of the Revised Code.

(25) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 1,111 capsules of Fastin-30mg, a Schedule IV controlled substance and prescription drug, an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(7) of the Revised Code.

(26) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 284 tablets of Fiorinal, a Schedule III controlled substance and prescription drug, an amount equal to or exceeding

the bulk amount but an amount less than three times that amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(5) of the Revised Code.

(27) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without keeping the records required by Section 3719.07 of the Revised Code, sell approximately 17,240 ounces of Histadyl EC, a Schedule V controlled substance, an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Section 3719.15 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(7) of the Revised Code.

(28) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 300 capsules of Ionamin, a Schedule IV controlled substance and prescription drug, an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(7) of the Revised Code.

(29) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 100 capsules of Librium-10mg, a Schedule IV controlled substance and prescription drug, an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.

(30) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without keeping the records required by Section 3719.07 of the Revised Code, sell approximately 3,044 ounces of Novahistine DH, a Schedule V controlled substance, an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Section 3719.15 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(7) of the Revised Code.

(31) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without keeping the records required by Section 3719.07 of the Revised Code, sell approximately 17,160 ounces of Robitussin AC, a Schedule V controlled substance, an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Section 3719.15 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(7) of the Revised Code.

(32) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 100 tablets of Soma Compound with Codeine, a Schedule III controlled substance and prescription drug, an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.

(33) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 600 tablets of Talwin Nx, a Schedule IV controlled substance and prescription drug, an amount equal to or exceeding the bulk amount but an amount less than three times that amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(5) of the Revised Code.

(34) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 806 ounces of Tussionex, a Schedule III controlled substance and prescription drug, an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(7) of the Revised Code.

(35) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 2,796 tablets of Tylenol #3, a Schedule III controlled

substance and prescription drug, an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(7) of the Revised Code.

(36) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 1,026 tablets of Tylenol #4, a Schedule III controlled substance and prescription drug, an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(7) of the Revised Code.

(37) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 336 tablets of Valium-2mg, a Schedule IV controlled substance and prescription drug, an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.

(38) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 1,545 tablets of Valium-5mg, a Schedule IV controlled substance and prescription drug, an amount equal to or exceeding the bulk amount but an amount less than three times that amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(5) of the Revised Code.

(39) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison did, on one or more occasions between May 1, 1983 and September 16, 1985 at Ellison Pharmacy, without a written or oral prescription, dispense a quantity of approximately 476 tablets of Valium-10mg, a Schedule IV controlled substance and prescription drug, an amount equal to or exceeding the bulk amount but an amount less than three times that amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(5) of the Revised Code.

(40) From the evidence presented, the State Board of Pharmacy finds that Frederick L. Ellison, as the responsible pharmacist and owner of Ellison Pharmacy, did not keep a record of all controlled substances received or dispensed; in violation of the provisions of Section 3719.07 of the Revised Code.

Conclusions Of Law

(1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (1), (2), and (10) through (40) of the Findings Of Fact constitutes gross immorality.

(2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (1), and (12) through (40) of the Findings Of Fact constitutes dishonesty and unprofessional conduct in the practice of pharmacy.

(3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (3) through (40) of the Findings Of Fact constitutes willful violations of the provisions of Chapters 2925., 3715., 3719., and 4729. of the Revised Code.

Pursuant to Section 4729.16 of the Ohio Revised Code, and the foregoing Findings Of Fact and Conclusions Of Law, the State Board of Pharmacy takes the following actions concerning the pharmacist license held by Frederick L. Ellison, No. 03-2-06428:

(A) On the basis of paragraph (1) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card held by Frederick L. Ellison.

(B) On the basis of paragraph (2) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card held by Frederick L. Ellison.

(C) On the basis of paragraph (3) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card held by Frederick L. Ellison.

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part that: "Any individual whose identification card is revoked, ..., 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 license should be forwarded by certified mail, return receipt requested.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.