



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-950630-070)

In The Matter Of:

KENNETH C. SMITH, R.Ph.

502 Meadowland
Hubbard, Ohio 44425
(R.Ph. No. 03-2-08193)

INTRODUCTION

THE MATTER OF KENNETH C. SMITH CAME TO HEARING ON NOVEMBER 30, 1995, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

KENNETH C. SMITH WAS REPRESENTED BY KAREN SEWALK, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) George Pavlich, Ohio State Board of Pharmacy
- (2) Kenneth C. Smith, Respondent

Respondent's Witnesses:

- (1) Kenneth C. Smith, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity letter dated June 30, 1995.
- (2) Exhibit 1A--Notice of Appearance of Counsel, Request for Hearing, and Request for List of Witnesses and Documents dated July 19, 1995.
- (3) Exhibit 1B--Hearing Schedule letter dated July 20, 1995.

- (4) Exhibit 1C--Letter from Douglas E. Graff dated July 27, 1995, with attachments: Request for Public Records and Documents and Objection to Motion for New Hearing Date dated July 27, 1995.
- (5) Exhibit 1D--Letter from David L. Rowland dated August 7, 1995.
- (6) Exhibit 1E--Letter from Paul F. Lamping dated September 19, 1995.
- (7) Exhibit 1F--Addendum Notice dated October 12, 1995.
- (8) Exhibit 1G--Pharmacist File Front Sheet of Kenneth Carroll Smith showing original date of registration as May 12, 1964.
- (9) Exhibit 1H--Copy of letter from Nancy Little dated September 19, 1995; Renewal Application For Pharmacist License, No. 03-2-08193, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of Kenneth C. Smith dated September 13, 1995; and copy of check number 8296 of Kenneth C. Smith dated September 13, 1995.
- (10) Exhibit 1I--Three-page Certified Copy of Finding on Guilty Plea to Bill of Information in the Court of Common Pleas, Trumbull County, Ohio of Kenneth Smith dated June 30, 1995.
- (11) Exhibit 2--Allen's Drugtown #5 Monthly Audit Log of Patient William Barba dated February 28, 1995.
- (12) Exhibit 3--Certified Copy of Ohio Department of Health, Vital Statistics, Certificate of Death of William M. Barba, date of death November 19, 1994.
- (13) Exhibit 3A--Two-page handwritten statement of Kenneth Smith dated February 10, 1995.
- (14) Exhibit 4--Allen's Drugtown #5 Medical Expenses of Kenneth Smith dated from October 1, 1993, to February 10, 1995.
- (15) Exhibit 5--Copy of two-page statement of Dr. Z. S. Mangalji signed and notarized on February 15, 1995.
- (16) Exhibit 6--Copy of two-page statement of Dr. Howard G. Slemmons signed and notarized on February 14, 1995.
- (17) Exhibit 7--Three-page Allen's Drugtown #5 Monthly Audit Log of Roger Jones dated February 28, 1995.
- (18) Exhibit 8--Four-page table of prescriptions of Roger Jones sorted by Doctor and Date.
- (19) Exhibit 9--Two-page statement of Dr. Guarda D. Ariza, M.D. signed and notarized on February 27, 1995, with two attached four-page tables regarding prescriptions of Roger Jones.
- (20) Exhibit 10--Two-page statement of Dr. Ronald M. Roth, M.D. signed and notarized on February 27, 1995, with two attached four-page tables regarding prescriptions of Roger Jones.
- (21) Exhibit 11--Two-page statement of Dr. Joseph J. Fonagy, D.D.S. signed and notarized on February 27, 1995, with two attached four-page tables regarding prescriptions of Roger Jones.
- (22) Exhibit 12-- One prescription order for Roger Jones dated December 13, 1994; and ten prescriptions numbered: 6608009; 4400681; 4400560; 4401499; 6607152; 4401116; 6605697; 4401377; 6606656; and 6611067.
- (23) Exhibit 13--Three prescriptions numbered as follows: 6611345; 6608627; and 6607184.
- (24) Exhibit 14--Five prescriptions numbered as follows: 6607885; 6607185; 6611032; 4402078; and 6609169.
- (25) Exhibit 15-- Two-page statement of Kenneth C. Smith signed and notarized on March 6, 1995, with attached four pages of tables regarding prescriptions of Roger Jones.

Respondent's Exhibits:

- (1) Motion To Exclude Written Statements Taken By The Ohio State Pharmacy Investigator dated November 30, 1995.
- (2) Exhibit A-Copy of faxed letter from Michael A. Bernard, not dated.
- (3) Exhibit B--Copy of page number 250d of "Facts and Comparisons", June, 1989.
- (4) Exhibit C--Copy of front cover, and pages 1027, 1028, 2157, and 2158 of the "Physicians' Desk Reference", 49 Edition, 1995.
- (5) Exhibit D--Copy of letter from Karen M. Sewalk dated October 19, 1995.
- (6) Exhibit E--Copy of faxed letter from Raymond M. Cataline dated November 28, 1995.

FINDINGS OF FACT

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

- (1) Records of the Board indicate that Kenneth C. Smith was originally licensed to practice pharmacy in the state of Ohio on May 12, 1964; and, on June 30, 1995, Kenneth C. Smith's license was summarily suspended in accordance with Section 3719.121(C) of the Ohio Revised Code.
- (2) On or about June 30, 1995, Kenneth C. Smith pled guilty in the Common Pleas Court of Trumbull County, Ohio, to felony drug abuse offenses, to wit: Kenneth C. Smith pled guilty to eight counts of Illegal Processing of Drug Documents, in violation of Section 2925.23 of the Ohio Revised Code, felonies of the fourth degree.
- (3) Kenneth C. Smith did, on or about the following dates, make false or forged prescriptions for dangerous drugs, to wit: Kenneth C. Smith refilled the following dangerous drug prescriptions without authorization from a practitioner and after the death of the patient for whom the prescriptions were written, thus, forging the prescription to indicate physician authorization when in fact there was none:

| <u>Date</u> | <u>Rx No.</u> | <u>Drug</u> | <u>Quantity</u> |
|-------------|---------------|-----------------|-----------------|
| 1/6/95 | 6608732 | Trimox 500mg | 9 capsules |
| 1/6/95 | 6609215 | Zyloprim 300mg | 20 tablets |
| 1/6/95 | 6609728 | Chromagen | 15 capsules |
| 1/6/95 | 6609759 | Bumex 1mg | 20 tablets |
| 1/10/95 | 6609215 | Zyloprim 300mg | 10 tablets |
| 1/10/95 | 6608732 | Trimox 500mg | 9 capsules |
| 1/13/95 | 6609759 | Bumex 1mg | 9 tablets |
| 1/13/95 | 6009728 | Chromagen | 10 capsules |
| 1/13/95 | 6609215 | Zyloprim 300mg | 10 tablets |
| 1/13/95 | 6608732 | Trimox 500mg | 9 capsules |
| 1/21/95 | 6609215 | Zyloprim 300mg | 10 tablets |
| 1/21/95 | 6609728 | Chromagen | 10 capsules |
| 1/21/95 | 6609759 | Bumex 1mg | 9 tablets |
| 1/26/95 | 6609215 | Zyloprim 300mg | 10 tablets |
| 1/26/95 | 6609728 | Chromagen | 10 capsules |
| 1/26/95 | 6611362 | Zaroxolyn 2.5mg | 7 tablets |
| 1/26/95 | 6609759 | Bumex 1mg | 9 tablets |
| 1/31/95 | 6611362 | Zaroxolyn 2.5mg | 7 tablets |
| 1/31/95 | 6609759 | Bumex 1mg | 9 tablets |
| 1/31/95 | 6609728 | Chromagen | 10 capsules |
| 1/31/95 | 6609215 | Zyloprim 300mg | 10 tablets |

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code

- (4) Kenneth C. Smith did, on or about the following dates, intentionally make, utter, or knowingly possess false or forged prescriptions, to wit: Kenneth C. Smith created, possessed, and then uttered the controlled substance prescriptions listed below:

| <u>Date</u> | <u>Rx No.</u> | <u>Drug</u> | <u>Quantity</u> |
|-------------|---------------|-------------------------|-----------------|
| 12/23/93 | 4400779 | Promethazine VC/Codeine | 180 ml |
| 12/27/93 | 4400779 | Promethazine VC/Codeine | 180 ml |
| 12/29/93 | 4400806 | Propoxyphene 100/APAP | 20 tablets |
| 10/17/94 | 4402134 | Propoxyphene 100/APAP | 20 tablets |
| 1/25/95 | 4402673 | Phentermine 37.5mg | 20 tablets |

Such conduct is in violation of Section 2925.23 of the Ohio Revised Code.

- (5) Kenneth C. Smith did, on or about the following dates, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Allen's Drugtown #5, Inc., beyond the express or implied consent of the owner, to wit: Kenneth C. Smith stole the following controlled substances:

| <u>Date</u> | <u>Rx No.</u> | <u>Drug</u> | <u>Quantity</u> |
|-------------|---------------|-------------------------|-----------------|
| 12/23/93 | 4400779 | Promethazine VC/Codeine | 180 ml |
| 12/27/93 | 4400779 | Promethazine VC/Codeine | 180 ml |
| 12/29/93 | 4400806 | Propoxyphene/APAP 100 | 20 tablets |
| 10/17/94 | 4402134 | Propoxyphene/APAP 100 | 20 tablets |
| 1/25/95 | 4402673 | Phentermine 37.5mg | 20 tablets |

Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (6) Kenneth C. Smith did, on or about January 25, 1995, knowingly obtain, possess, or use a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Kenneth C. Smith stole and possessed outside the pharmacy 20 units of Phentermine 37.5mg, a schedule IV controlled substance, pursuant to prescription number 4402673. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.

- (7) Kenneth C. Smith did, on or about the following dates, make false or forged prescriptions for dangerous drugs, to wit: Kenneth C. Smith filled the following dangerous drug prescriptions without authorization from a practitioner:

| <u>Date</u> | <u>Rx No.</u> | <u>Drug</u> | <u>Quantity</u> |
|-------------|---------------|--------------------|-----------------|
| 10/15/93 | 6603129 | Triaminolone 0.1% | 80 grams |
| 10/15/93 | 6603128 | Methylprednisolone | 21 tablets |
| 12/23/93 | 6604565 | Trimox 500mg | 40 capsules |
| 12/27/93 | 6604619 | Amantadine 100mg | 14 capsules |
| 12/29/93 | 6604671 | Benzonatate 100mg | 14 capsules |
| 12/29/93 | 6604670 | Erythromycin ES | 20 tablets |
| 1/3/94 | 6604670 | Erythromycin ES | 20 tablets |
| 9/19/94 | 6608935 | Symmetrel 100mg | 14 capsules |
| 9/19/94 | 6608934 | Trimox 500mg | 30 capsules |
| 12/26/94 | 6610805 | Cipro 500mg | 6 tablets |

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.

- (8) Kenneth C. Smith did, on or about the following dates, make false or forged prescriptions for dangerous drugs, to wit: Kenneth C. Smith filled or caused the dispensing of the following dangerous drug prescriptions without authorization from a practitioner:

| <u>Date</u> | <u>Rx No.</u> | <u>Rx Type</u> | <u>Drug</u> | <u>Pharmacy</u> |
|-------------|---------------|----------------|--------------------------|----------------------|
| 10/5/93 | 6602857 | new | Fioricet tablets | Allen's Drugtown # 5 |
| 10/5/93 | 6602858 | new | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 10/19/93 | 6602857 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 11/6/93 | 6602857 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 11/23/93 | 6603952 | new | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 12/3/93 | 6602857 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 12/3/93 | 6603952 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 12/14/93 | 6602857 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 12/14/93 | 6603952 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 12/21/93 | 6603952 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 12/30/93 | 6603952 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/4/94 | 6603952 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/18/94 | 6604879 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/18/94 | 6604974 | new | Fioricet tablets | Allen's Drugtown # 5 |
| 1/28/94 | 6604879 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 2/2/94 | 6604974 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 2/12/94 | 6605335 | new | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 2/16/94 | 6604974 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 2/21/94 | 6605335 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 2/26/94 | 6604974 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 3/1/94 | 6605335 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 3/7/94 | 6604974 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 3/12/94 | 6605335 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 3/22/94 | 6605679 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 3/24/94 | 6605674 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 3/26/94 | 6606053 | new | Fioricet tablets | Allen's Drugtown # 5 |
| 3/30/94 | 6605697 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 4/2/94 | 6605335 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 4/2/94 | 6605674 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 4/6/94 | 6605679 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 4/9/94 | 6606053 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 4/13/94 | 6605679 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 4/19/94 | 6606053 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 4/23/94 | 6605335 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 4/23/94 | 6606427 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 4/26/94 | 6606546 | new | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 4/28/94 | 6606053 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 4/28/94 | 6606427 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 5/3/94 | 6606427 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 5/5/94 | 6606427 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 5/5/94 | 6606546 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 5/10/94 | 6606053 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 5/13/94 | 6606546 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 5/17/94 | 6606053 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 5/21/94 | 6606546 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 5/24/94 | 6607033 | new | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 5/28/94 | 6606546 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 6/3/94 | 6607184 | new | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 6/3/94 | 6607185 | new | Erythrocin 500mg | Allen's Drugtown # 5 |
| 6/6/94 | 6606656 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 6/8/94 | 6607152 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 6/13/94 | 6607152 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 6/21/94 | 6607185 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 6/25/94 | 6607184 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 7/1/94 | 6607033 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 7/1/94 | 6607152 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 7/1/94 | 6607185 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 7/11/94 | 6607184 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 7/11/94 | 6607185 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 7/19/94 | 6607577 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 7/22/94 | 6607152 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 7/29/94 | 6607033 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 7/29/94 | 6607885 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |

| <u>Date</u> | <u>Rx No.</u> | <u>Rx Type</u> | <u>Drug</u> | <u>Pharmacy</u> |
|-------------|---------------|----------------|--------------------------|----------------------|
| 8/9/94 | 6607577 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 8/16/94 | 6607033 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 8/20/94 | 6607184 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 8/25/94 | 6608009 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 8/27/94 | 6607885 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 9/1/94 | 6608627 | new | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 9/1/94 | 6608627 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 9/9/94 | 6607184 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 9/12/94 | 6607885 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 9/12/94 | 6608009 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 9/16/94 | 6608009 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 9/24/94 | 6608627 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 9/29/94 | 6607577 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 10/3/94 | 6608009 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 10/6/94 | 6608627 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 10/6/94 | 6609169 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 10/11/94 | 6606656 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 10/11/94 | 6607577 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 10/22/94 | 6608009 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 11/3/94 | 6608627 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 11/3/94 | 6609846 | new | Fioricet tablets | Allen's Drugtown # 5 |
| 11/10/94 | 6609169 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 11/15/94 | 6606656 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 11/15/94 | 6609169 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 11/17/94 | 6609846 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 11/22/94 | 6610079 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 11/25/94 | 6610079 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 11/28/94 | 6610079 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 11/29/94 | 6609846 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 12/3/94 | 6609169 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 12/3/94 | 6610079 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 12/6/94 | 6610435 | new | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 12/13/94 | 6610435 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 12/20/94 | 6610435 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 12/29/94 | 6609846 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 12/31/94 | 6610435 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/3/95 | 6608627 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/7/95 | 6610435 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/10/95 | 6609846 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 1/10/95 | 6611032 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 1/17/95 | 6608627 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/19/95 | 6611067 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/21/95 | 6609846 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 1/21/95 | 6611032 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 1/24/95 | 6611345 | new | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/28/95 | 6611067 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/31/95 | 6611345 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/31/95 | 6611502 | new | Fioricet tablets | Allen's Drugtown # 5 |
| 2/4/95 | 6611067 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 2/7/95 | 6611345 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 2/7/95 | 6611502 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 2/11/95 | 6611067 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.

- (9) Kenneth C. Smith did, on or about the following dates, sell at retail dangerous drugs, to wit: Kenneth C. Smith sold the following dangerous drugs without a valid prescription from a practitioner:

| <u>Date</u> | <u>Rx No.</u> | <u>Rx Type</u> | <u>Drug</u> | <u>Pharmacy</u> |
|-------------|---------------|----------------|--------------------------|----------------------|
| 7/22/94 | 6607152 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 7/29/94 | 6607033 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 7/29/94 | 6607885 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |

| <u>Date</u> | <u>Rx No.</u> | <u>Rx Type</u> | <u>Drug</u> | <u>Pharmacy</u> |
|-------------|---------------|----------------|--------------------------|----------------------|
| 8/9/94 | 6607577 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 8/16/94 | 6607033 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 8/20/94 | 6607184 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 8/25/94 | 6608009 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 8/27/94 | 6607885 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 9/1/94 | 6608627 | new | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 9/1/94 | 6608627 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 9/9/94 | 6607184 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 9/12/94 | 6607885 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 9/12/94 | 6608009 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 9/16/94 | 6608009 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 9/24/94 | 6608627 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 9/29/94 | 6607577 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 10/3/94 | 6608009 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 10/6/94 | 6608627 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 10/6/94 | 6609169 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 10/11/94 | 6606656 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 10/11/94 | 6607577 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 10/22/94 | 6608009 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 11/3/94 | 6608627 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 11/3/94 | 6609846 | new | Fioricet tablets | Allen's Drugtown # 5 |
| 11/10/94 | 6609169 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 11/15/94 | 6606656 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 11/15/94 | 6609169 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 11/17/94 | 6609846 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 11/22/94 | 6610079 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 11/25/94 | 6610079 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 11/28/94 | 6610079 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 11/29/94 | 6609846 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 12/3/94 | 6609169 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 12/3/94 | 6610079 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 12/6/94 | 6610435 | new | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 12/13/94 | 6610435 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 12/20/94 | 6610435 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 12/29/94 | 6609846 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 12/31/94 | 6610435 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/3/95 | 6608627 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/7/95 | 6610435 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/10/95 | 6609846 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 1/10/95 | 6611032 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 1/17/95 | 6608627 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/19/95 | 6611067 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/21/95 | 6609846 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 1/21/95 | 6611032 | refill | Erythrocin 500mg | Allen's Drugtown # 5 |
| 1/28/95 | 6611067 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/31/95 | 6611345 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 1/31/95 | 6611502 | new | Fioricet tablets | Allen's Drugtown # 5 |
| 2/4/95 | 6611067 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 2/7/95 | 6611345 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |
| 2/7/95 | 6611502 | refill | Fioricet tablets | Allen's Drugtown # 5 |
| 2/11/95 | 6611067 | refill | Butalbital/APAP/Caffeine | Allen's Drugtown # 5 |

Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.

- (10) Kenneth C. Smith did, on or about the following dates, intentionally make, utter, or knowingly possess false or forged prescriptions, to wit: Kenneth C. Smith created and subsequently possessed prescriptions for the controlled substances listed below:

| <u>Date</u> | <u>Rx No.</u> | <u>Rx Type</u> | <u>Drug</u> | <u>Pharmacy</u> |
|-------------|---------------|----------------|-------------------|----------------------|
| 12/3/93 | 4400681 | new | Alprazolam 0.5 mg | Allen's Drugtown # 5 |
| 2/21/94 | 4400560 | refill | Alprazolam 0.5 mg | Allen's Drugtown # 5 |
| 6/25/94 | 4401116 | refill | Alprazolam 0.5 mg | Allen's Drugtown # 5 |
| 7/19/94 | 4401499 | refill | Alprazolam 0.5 mg | Allen's Drugtown # 5 |

| | | | | |
|----------|---------|--------|-----------------------|----------------------|
| 8/16/94 | 4401499 | refill | Alprazolam 0.5 mg | Allen's Drugtown # 5 |
| 9/12/94 | 4401499 | refill | Alprazolam 0.5 mg | Allen's Drugtown # 5 |
| 10/15/94 | 4402078 | refill | Acetaminophen/Codeine | Allen's Drugtown # 5 |
| 10/25/94 | 4402078 | refill | Acetaminophen/Codeine | Allen's Drugtown # 5 |

Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

- (11) Kenneth C. Smith did, on or about the following dates, knowingly sell a controlled substance in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Kenneth C. Smith sold the following controlled substances without a legitimate prescription:

| <u>Date</u> | <u>Rx No.</u> | <u>Rx Type</u> | <u>Drug</u> | <u>Pharmacy</u> |
|-------------|---------------|----------------|-----------------------|----------------------|
| 12/3/93 | 4400681 | new | Alprazolam 0.5 mg | Allen's Drugtown # 5 |
| 2/21/94 | 4400560 | refill | Alprazolam 0.5 mg | Allen's Drugtown # 5 |
| 6/25/94 | 4401116 | refill | Alprazolam 0.5 mg | Allen's Drugtown # 5 |
| 7/19/94 | 4401499 | refill | Alprazolam 0.5 mg | Allen's Drugtown # 5 |
| 8/16/94 | 4401499 | refill | Alprazolam 0.5 mg | Allen's Drugtown # 5 |
| 9/12/94 | 4401499 | refill | Alprazolam 0.5 mg | Allen's Drugtown # 5 |
| 10/15/94 | 4402078 | refill | Acetaminophen/Codeine | Allen's Drugtown # 5 |
| 10/25/94 | 4402078 | refill | Acetaminophen/Codeine | Allen's Drugtown # 5 |

Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) the Findings of Fact constitutes being guilty of a felony 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 (11) 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.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (11) 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.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (11) 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. or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued June 30, 1995.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Kenneth C. Smith:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card, No. 03-2-08193,

held by Kenneth C. Smith indefinitely and such suspension is effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Kenneth C. Smith may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.

- (B) Five years after the effective date of this Order, the Board will permit Kenneth C. Smith's license to practice pharmacy in Ohio to be reinstated provided that he has taken and successfully completed the Federal Drug Law Examination and State Jurisprudence examination offered by the Board, prior to that date. If Kenneth C. Smith has not successfully completed the examinations prior to five years from the effective date of this Order, his license will remain suspended until this condition has been achieved. Further, when permitted to renew, Kenneth C. Smith must provide evidence of 4.5 credit hours of continuing pharmacy education in compliance with Chapter 4729-7 of the Ohio Administrative Code for the three-year period prior to the date of submitting his application for renewal.

Division (B) of Section 4729.16 of the Ohio Revised Code provides: "Any individual whose identification card is revoked, suspended, or refused, shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

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

MOTION CARRIED.

SO ORDERED.