



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-981020-022)

In The Matter Of:

JAMES BRIAN BIRD

1681 Maple Square, NE

Bolivar, Ohio 44612

(D.O.B. 1/4/57)

INTRODUCTION

THE MATTER OF JAMES BRIAN BIRD CAME TO HEARING ON APRIL 6, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JAMES BRIAN BIRD WAS REPRESENTED BY WAYNE KEREK, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) David Gallagher, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) James Brian Bird, Respondent
- (2) Kent Douglas Potts, R.Ph., Pharmacists Rehabilitation Organization, Inc.
- (3) Mimi Bird, Wife of Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of six-page Notice of Opportunity for Hearing letter dated October 20, 1998.
- (2) Exhibit 1A--Two-page Hearing Request letter dated November 16, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated November 20, 1998.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated November 24, 1998.

- (5) Exhibit 1D--Application for Examination as a Pharmacist of James Brian Bird signed and notarized on September 23, 1998.
- (6) Exhibit 2A-- Copy of nineteen-page Indictment for Sixty-Five Counts Trafficking in Drugs in the Court of Common Pleas of Tuscarawas County, Ohio, The State of Ohio vs. James Brian Bird, Case No. 93CR040098, dated April 28, 1993.
- (7) Exhibit 2B--Copy of three-page Judgment Entry on Change of Plea in the Court of Common Pleas of Tuscarawas County, The State of Ohio v. James Brian Bird, Case No. 93CR040098, dated December 22, 1993.
- (8) Exhibit 2C--Copy of three-page Judgment Entry on Sentencing in the Court of Common Pleas of Tuscarawas County, The State of Ohio v. James Brian Bird, Case No. 93CR040098, dated February 23, 1994.
- (9) Exhibit 3--Copy of twelve-page Order of the State Board of Pharmacy, Docket No. D-930429-084, in the matter of James Brian Bird, R.Ph. dated March 14, 1994.
- (10) Exhibit 4--Six-page copy of eight newspaper articles as follows: "Pharmacist due arraignment", *The Repository*, May 5, 1993; "Pharmacist charged with trafficking", *The Times Reporter*, May 1, 1993; "Pills for pot" *The Times Reporter*, January 26, 1994; "Suit filed in case against pharmacist", *The Times Reporter*, January 15, 1994; "3 ordered to attend hearing", *The Times Reporter*, January 20, 1994; "Former customer of drug store set to serve jail time", *The Times Reporter*, June 8, 1994; "Convicted pharmacist wants license back" *The Times Reporter*, December 18, 1996; and "Dover attorney fires back", *The Times Reporter*, January 28, 1994.
- (11) Exhibit 5--Copy of two-page handwritten statement of J. Brian Bird signed and notarized on February 22, 1993.
- (12) Exhibit 6--Copy of handwritten statement of Robert Burgess signed and notarized on April 30, 1993.
- (13) Exhibit 7--Copy of two-page handwritten statement of Jean L. Lahmers signed and notarized on March 2, 1993.
- (14) Exhibit 8--Copy of ten-page Order of the State Board of Pharmacy, Docket No. D-970117-025, in the matter of James Brian Bird dated September 11, 1997.

Respondent's Exhibits:

- (1) Exhibit A--Copy of letter from Terry Hart dated January 27, 1999.
- (2) Exhibit B--Copy of letter from Bruce Hensley dated February 2, 1999.
- (3) Exhibit C--Copy of two-page letter from Bruce Hensley dated June 24, 1997.
- (4) Exhibit D--Copy of Affidavit of Patricia A. Schott signed and notarized on February 2, 1999.
- (5) Exhibit E1--Four-page copy of urine drug screen report of Brian Bird dated September 16, 1997.
- (6) Exhibit E2--Four-page copy of urine drug screen report of Brian Bird dated September 28, 1997.
- (7) Exhibit E3--Four-page copy of urine drug screen report of Brian Bird dated December 8, 1997.
- (8) Exhibit E4--Four-page copy of urine drug screen report of Brian Bird dated January 30, 1998.
- (9) Exhibit E5--Four-page copy of urine drug screen report of Brian Bird dated February 21, 1998.
- (10) Exhibit E6--Four-page copy of urine drug screen report of Brian Bird dated March 13, 1998.
- (11) Exhibit E7--Four-page copy of urine drug screen report of Brian Bird dated May 14, 1998.
- (12) Exhibit E8--Four-page copy of urine drug screen report of Brian Bird dated June 13, 1998.

- (13) Exhibit E9--Four-page copy of urine drug screen report of Brian Bird dated July 29, 1998.
- (14) Exhibit E10--Four-page copy of urine drug screen report of Brian Bird dated August 21, 1998.
- (15) Exhibit E11--Four-page copy of urine drug screen report of Brian Bird dated October 7, 1998.
- (16) Exhibit E12--Four-page copy of urine drug screen report of Brian Bird dated December 1, 1998.
- (17) Exhibit E13--Four-page copy of urine drug screen report of Brian Bird dated January 30, 1999.
- (18) Exhibit E14--Four-page copy of urine drug screen report of Brian Bird dated March 28, 1999.
- (19) Exhibit F1--Copy of meeting attendance verification dated from August 18, 1997, through August 24, 1997.
- (20) Exhibit F2--Copy of meeting attendance verification dated from August 25, 1997, through August 31, 1997.
- (21) Exhibit F3--Copy of meeting attendance verification dated from September 1, 1997, through September 7, 1997.
- (22) Exhibit F4--Copy of meeting attendance verification dated from September 8, 1997, through September 14, 1997.
- (23) Exhibit F5--Copy of meeting attendance verification dated from September 15, 1997, through September 21, 1997.
- (24) Exhibit F6--Copy of meeting attendance verification dated from September 22, 1997, through September 28, 1997.
- (25) Exhibit F7--Copy of meeting attendance verification dated from September 29, 1997, through October 5, 1997.
- (26) Exhibit F8--Copy of meeting attendance verification dated from October 6, 1997, through October 12, 1997.
- (27) Exhibit F9--Copy of meeting attendance verification dated from October 13, 1997, through October 19, 1997.
- (28) Exhibit F10--Copy of meeting attendance verification dated from October 20, 1997, through October 26, 1997.
- (29) Exhibit F11--Copy of meeting attendance verification dated from October 27, 1997, through November 2, 1997.
- (30) Exhibit F12--Copy of meeting attendance verification dated from November 3, 1997, through November 9, 1997.
- (31) Exhibit F13--Copy of meeting attendance verification dated from November 10, 1997, through November 16, 1997.
- (32) Exhibit F14--Copy of meeting attendance verification dated from November 17, 1997, through November 23, 1997.
- (33) Exhibit F15--Copy of meeting attendance verification dated from November 24, 1997, through November 30, 1997.
- (34) Exhibit F16--Copy of meeting attendance verification dated from December 1, 1997, through December 7, 1997.
- (35) Exhibit F17--Copy of meeting attendance verification dated from December 8, 1997, through December 14, 1997.
- (36) Exhibit F18--Copy of meeting attendance verification dated from December 15, 1997, through December 21, 1997.
- (37) Exhibit F19--Copy of meeting attendance verification dated from December 22, 1997, through December 28, 1997.
- (38) Exhibit F20--Copy of meeting attendance verification dated from December 29, 1997, through January 4, 1998.

- (39) Exhibit F21--Copy of meeting attendance verification dated from January 5, 1998, through January 11, 1998.
- (40) Exhibit F22--Copy of meeting attendance verification dated from January 12, 1998, through January 18, 1998.
- (41) Exhibit F23--Copy of meeting attendance verification dated from January 19, 1998, through January 25, 1998.
- (42) Exhibit F24--Copy of meeting attendance verification dated from January 26, 1998, through February 1, 1998.
- (43) Exhibit F25--Copy of meeting attendance verification dated from February 2, 1998, through February 8, 1998.
- (44) Exhibit F26--Copy of meeting attendance verification dated from February 9, 1998, through February 15, 1998.
- (45) Exhibit F27--Copy of meeting attendance verification dated from February 16, 1998, through February 22, 1998.
- (46) Exhibit F28--Copy of meeting attendance verification dated from February 23, 1998, through March 1, 1998.
- (47) Exhibit F29--Copy of meeting attendance verification dated from March 2, 1998, through March 8, 1998.
- (48) Exhibit F30--Copy of meeting attendance verification dated from March 9, 1998, through March 15, 1998.
- (49) Exhibit F31--Copy of meeting attendance verification dated from March 16, 1998, through March 22, 1998.
- (50) Exhibit F32--Copy of meeting attendance verification dated from March 23, 1998, through March 29, 1998.
- (51) Exhibit F33--Copy of meeting attendance verification dated from March 30, 1998, through April 5, 1998.
- (52) Exhibit F34--Copy of meeting attendance verification dated from April 6, 1998, through April 12, 1998.
- (53) Exhibit F35--Copy of meeting attendance verification dated from April 13, 1998, through April 19, 1998.
- (54) Exhibit F36--Copy of meeting attendance verification dated from April 20, 1998, through April 26, 1998.
- (55) Exhibit F37--Copy of meeting attendance verification dated from April 27, 1998, through May 3, 1998.
- (56) Exhibit F38--Copy of meeting attendance verification dated from May 4, 1998, through May 10, 1998.
- (57) Exhibit F39--Copy of meeting attendance verification dated from May 11, 1998, through May 17, 1998.
- (58) Exhibit F40--Copy of meeting attendance verification dated from May 18, 1998, through May 24, 1998.
- (59) Exhibit F41--Copy of meeting attendance verification dated from May 25, 1998, through May 31, 1998.
- (60) Exhibit F42--Copy of meeting attendance verification dated from June 1, 1998, through June 7, 1998.
- (61) Exhibit F43--Copy of meeting attendance verification dated from June 8, 1998, through June 14, 1998.
- (62) Exhibit F44--Copy of meeting attendance verification dated from June 15, 1998, through June 21, 1998.
- (63) Exhibit F45--Copy of meeting attendance verification dated from June 22, 1998, through June 28, 1998.
- (64) Exhibit F46--Copy of meeting attendance verification dated from June 29, 1998, through July 5, 1998.

- (65) Exhibit F47--Copy of meeting attendance verification dated from July 6, 1998, through July 12, 1998.
- (66) Exhibit F48--Copy of meeting attendance verification dated from July 13, 1998, through July 19, 1998.
- (67) Exhibit F49--Copy of meeting attendance verification dated from July 20, 1998, through July 26, 1998.
- (68) Exhibit F50--Copy of meeting attendance verification dated from July 27, 1998, through August 2, 1998.
- (69) Exhibit F51--Copy of meeting attendance verification dated from August 3, 1998, through August 9, 1998.
- (70) Exhibit F52--Copy of meeting attendance verification dated from August 10, 1998, through August 16, 1998.
- (71) Exhibit F53--Copy of meeting attendance verification dated from August 17, 1998, through August 23, 1998.
- (72) Exhibit F54--Copy of meeting attendance verification dated from August 24, 1998, through August 30, 1998.
- (73) Exhibit F55--Copy of meeting attendance verification dated from August 31, 1998, through September 6, 1998.
- (74) Exhibit F56--Copy of meeting attendance verification dated from September 7, 1998, through September 13, 1998.
- (75) Exhibit F57--Copy of meeting attendance verification dated from September 14, 1998, through September 20, 1998.
- (76) Exhibit F58--Copy of meeting attendance verification dated from September 21, 1998, through September 27, 1998.
- (77) Exhibit F59--Copy of meeting attendance verification dated from September 28, 1998, through October 4, 1998.
- (78) Exhibit F60--Copy of meeting attendance verification dated from October 5, 1998, through October 11, 1998.
- (79) Exhibit F61--Copy of meeting attendance verification dated from October 12, 1998, through October 18, 1998.
- (80) Exhibit F62--Copy of meeting attendance verification dated from October 19, 1998, through October 25, 1998.
- (81) Exhibit F63--Copy of meeting attendance verification dated from October 26, 1998, through November 1, 1998.
- (82) Exhibit F64--Copy of meeting attendance verification dated from November 2, 1998, through November 8, 1998.
- (83) Exhibit F65--Copy of meeting attendance verification dated from November 9, 1998, through November 15, 1998.
- (84) Exhibit F66--Copy of meeting attendance verification dated from November 16, 1998, through November 22, 1998.
- (85) Exhibit F67--Copy of meeting attendance verification dated from November 23, 1998, through November 29, 1998.
- (86) Exhibit F68--Copy of meeting attendance verification dated from November 30, 1998, through December 6, 1998.
- (87) Exhibit F69--Copy of meeting attendance verification dated from December 7, 1998, through December 13, 1998.
- (88) Exhibit F70--Copy of meeting attendance verification dated from December 14, 1998, through December 20, 1998.

- (89) Exhibit F71--Copy of meeting attendance verification dated from December 21, 1998, through December 27, 1998.
- (90) Exhibit F72--Copy of meeting attendance verification dated from December 28, 1998, through January 3, 1999.
- (91) Exhibit F73--Copy of meeting attendance verification dated from December 28, 1998, through January 3, 1999.
- (92) Exhibit F74--Copy of meeting attendance verification dated from January 4, 1999, through January 10, 1999.
- (93) Exhibit F75--Copy of meeting attendance verification dated from January 11, 1999, through January 17, 1999.
- (94) Exhibit F76--Copy of meeting attendance verification dated from January 18, 1999, through January 24, 1999.
- (95) Exhibit F77--Copy of meeting attendance verification dated from January 25, 1999, through January 31, 1999.
- (96) Exhibit F78--Copy of meeting attendance verification dated from February 1, 1999, through February 7, 1999.
- (97) Exhibit F79--Copy of meeting attendance verification dated from February 8, 1999, through February 14, 1999.
- (98) Exhibit F80--Copy of meeting attendance verification dated from February 15, 1999, through February 21, 1999.
- (99) Exhibit F81--Copy of meeting attendance verification dated from February 22, 1998, through February 28, 1999.
- (100) Exhibit F82--Copy of meeting attendance verification dated from March 1, 1999, through March 7, 1999.
- (101) Exhibit F83--Copy of meeting attendance verification dated from March 8, 1999, through March 14, 1999.
- (102) Exhibit F84--Copy of meeting attendance verification dated from March 15, 1999, through March 21, 1999.
- (103) Exhibit F85--Copy of meeting attendance verification dated from March 22, 1999, through March 28, 1999.
- (104) Exhibit G1--Copy of letter from James Brian Bird addressed to Kim Metcalf dated March 5, 1999.
- (105) Exhibit G2--Copy of letter from James Brian Bird addressed to Sharon Duda dated March 17, 1999.
- (106) Exhibit G3--Copy of letter from James Brian Bird addressed to Robert Burgess dated March 19, 1999.
- (107) Exhibit G4--Copy of letter from James Brian Bird addressed to Jean Lahmers dated March 7, 1999.
- (108) Exhibit G5--Copy of letter from James Brian Bird addressed to Linda Hanner dated March 3, 1999.
- (109) Exhibit H1--Copy of certification of continuing pharmacy education credit of James Bird for program number 105-999-98-702-H01 dated February 16, 1999.
- (110) Exhibit H2--Copy of certification of continuing pharmacy education credit of James Bird for program number 105-999-98-703-H01 dated February 16, 1999.
- (111) Exhibit H3--Copy of certification of continuing pharmacy education credit of James Bird for program number 105-999-98-704-H01 dated February 16, 1999.
- (112) Exhibit H4--Copy of certification of continuing pharmacy education credit of James Bird for program number 105-999-98-705-H01 dated February 16, 1999.
- (113) Exhibit I1--Copy of letter from Rev. Michael Nimocks dated March 20, 1999.
- (114) Exhibit I2--Copy of letter from Jim Brearley dated March 26, 1999.
- (115) Exhibit I3--Copy of letter from Albert I. Weinstein dated March, 1999 (date illegible).
- (116) Exhibit I4--Copy of letter from Kent D. Potts dated March 1, 1999.
- (117) Exhibit I5--Copy of letter from Joseph C. Salmen dated February 16, 1999.

- (118) Exhibit 16--Copy of letter from Scott Bernhard dated March 17, 1999.
- (119) Exhibit 17--Copy of letter from Michael Johnson dated March 21, 1999.
- (120) Exhibit 18--Copy of letter from Douglas Boyd, not dated.
- (121) Exhibit 19--Copy of letter from Mimi Bird dated March 24, 1999.
- (122) Exhibit 110--Copy of letter from H. G. McDonnell dated March 30, 1999.

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 James Brian Bird submitted an Application for Examination as a Pharmacist on or about September 24, 1998.
- (2) Records further indicate that on or about March 14, 1994, the Board found the following to be fact:
 - (a) Records of the State Board of Pharmacy indicate that James Brian Bird was originally licensed to practice pharmacy in the state of Ohio by reciprocity on December 2, 1980, and was summarily suspended on April 29, 1993. Further, James Brian Bird admitted in his testimony that he was the responsible pharmacist during all relevant time periods as stated in the paragraphs below.
 - (b) James Brian Bird did, on or about December 22, 1992, and dates prior thereto, practice pharmacy at the Medicine Shoppe, 555 W. High Street, New Philadelphia, Ohio, when addicted to drugs. James Brian Bird admitted that he abused Percodan, Percocet, Tylox, and their generic equivalents. Thus, James Brian Bird is addicted to or abusing liquor and/or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.
 - (c) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 115 units of Dexedrine 5mg, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
 - (d) James Brian Bird, as the responsible pharmacist did, between August 10, 1991, and December 2, 1992, knowingly sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, a controlled substance in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird and/or a pharmacist under his control sold 172 units of Xanax 0.25mg, a schedule IV controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
 - (e) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold, for his own purposes, 65 units of Percodan and/or generic equivalents, a schedule II controlled substance, without prescriptions and/or without a legitimate

medical purpose. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.

- (f) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 755 units of Tylox and/or generic equivalents, and 156 units of Dilaudid 4mg, schedule II controlled substances, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.
- (g) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 300 units of APAP 325mg/Codeine 30mg, and 990ml of Hycodan Syrup, schedule III controlled substances, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.
- (h) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 3,600 units of Diazepam 5mg, a schedule IV controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.
- (i) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding one hundred times the bulk amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 5,645 units of Percocet and/or generic equivalents, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(10) of the Ohio Revised Code.
- (j) James Brian Bird did, between April 30, 1990, and April 30, 1993, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold the following schedule IV controlled substances without prescriptions and/or without a legitimate medical purpose:

<u>Drug</u>	<u>Quantity</u>
Adipex-P 3.75mg	292
Phentermine 37.5mg	1150
Phentermine 30mg	357

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (k) James Brian Bird did, between April 30, 1990, and April 30, 1993, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Ohio Revised Code, to wit: James Brian Bird or a pharmacist under his control sold 42 units of Ionimin 30mg, a schedule IV controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.
- (l) James Brian Bird did, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: James Brian Bird created false or forged prescriptions in the name of patient Linda Hanner, not authorized by a practitioner for the following dangerous drugs:

<u>Rx No.</u>	<u>Type</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
694394	original	03/05/92	Ceclor 250mg	21
694394	refill	08/07/92	Ceclor 250mg	21
701111	original	06/23/92	Seldane 60mg	20
701111	refill	07/11/92	Seldane 60mg	20
701111	refill	07/27/92	Seldane 60mg	20
701111	refill	08/25/92	Seldane 60mg	15
701111	refill	08/31/92	Seldane 60mg	15
701111	refill	09/11/92	Seldane 60mg	15
701111	refill	10/05/92	Seldane 60mg	15
701111	refill	11/19/92	Seldane 60mg	10
707033	original	10/05/92	Seldane-D	15
707033	refill	10/09/92	Seldane-D	15

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

- (m) James Brian Bird did, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: James Brian Bird created false or forged telephone prescriptions in the name of patient Willard Hanner, not authorized by a practitioner for the following dangerous drugs:

<u>Rx No.</u>	<u>Type</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
667874	original	01/21/91	Colfed A	12
671672	original	03/08/91	Doxycycline 100mg	11
671672	refill	06/27/91	Doxycycline 100mg	11
680953	original	08/08/91	Cipro 500mg	14
680953	refill	08/15/91	Cipro 500mg	14
680953	refill	11/07/91	Cipro 500mg	14
681938	original	08/29/91	Tetracycline-250	40
681938	refill	04/08/92	Tetracycline-250	56
695035	original	03/16/92	Erythromycin-250	40
695035	refill	03/26/92	Erythromycin-250	40
695035	refill	04/02/92	Erythromycin-250	40
701284	original	06/26/92	Cephalexin 250mg	28
701284	refill	10/15/92	Cephalexin 250mg	28
706417	original	09/25/92	Cipro 500mg	14
707660	original	10/15/92	Beconase AQ	Nasal Spray
			25mg	

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

- (n) James Brian Bird did, from on or about April, 1990, through February, 1993, furnish to another controlled substances when the conduct was not in accordance with Chapters 3719., 4715., 4729., 4731., and/or 4741. of the Ohio Revised Code, to wit: due to illegal sales of Diazepam 5mg, a schedule IV controlled substance, to Jean Lahmers, James Brian Bird caused her to become drug dependent. Such conduct is in violation of Section 2925.02(B) of the Ohio Revised Code.
- (o) James Brian Bird, as the responsible pharmacist did, between August 10, 1991, and December 2, 1992, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, a controlled substance in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird or a pharmacist under his control sold 480ml of Methadone oral solution 5mg/5ml, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
- (p) James Brian Bird, as the responsible pharmacist did, between August 10, 1991, and December 2, 1992, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, controlled substances in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird or a pharmacist under his control sold the following schedule II controlled substances without prescriptions and/or without a legitimate medical purpose:

<u>Drug</u>	<u>Quantity</u>
Methylphenidate 5mg	1,009
Methylphenidate Extended Release 20mg	201

Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.

- (q) James Brian Bird, as the responsible pharmacist did, between April 30, 1990, and April 30, 1993, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, a controlled substance in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird or a pharmacist under his control sold the following controlled substances without prescriptions and/or without a legitimate medical purpose:

<u>Drug</u>	<u>Schedule</u>	<u>Quantity</u>
Methylphenidate 10mg	II	1,118
Xanax 0.5mg	IV	1,208
Xanax 1 mg	IV	940

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (r) James Brian Bird did, on or about December 21, 1993, plead guilty in the Court of Common Pleas of Tuscarawas County, Ohio, to fifteen counts of Trafficking in Drugs, in violation of Section 2925.03(A)(1) of the Ohio Revised Code.

The Board concluded that James Brian Bird was guilty of a felony and gross immorality; guilty of dishonesty and unprofessional conduct in the practice of pharmacy; addicted to and abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy; and guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Sections 3715.52 to 3715.72 or Chapters 2925., 3719., or 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code. Therefore, James Brian Bird's license to practice pharmacy in the state of Ohio, No. 03-2-13744, was revoked.

- (3) Records of the Board further indicate that James Brian Bird submitted an Application for Examination as a Pharmacist on or about November 27, 1996, and on September 11, 1997, for the reasons stated in paragraph (2) above, his application was denied.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2)(r) of the Findings of Fact constitutes being guilty of a felony and gross immorality as provided in paragraph (B) of Rule 4729-5-04 of the Ohio Administrative Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2)(r) of the Findings of Fact constitutes having been convicted of violating a state or federal pharmacy or drug law as provided in paragraph (B) of Rule 4729-5-04 of the Ohio Administrative Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2)(a) through (2)(r) of the Findings of Fact constitute not being of good moral character and habits as provided in paragraph (C) of Rule 4729-5-04 of the Ohio Administrative Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2)(b) and (2)(e) of the Findings of Fact constitute being addicted to or abusing liquor or drugs as provided in paragraph (D) of Rule 4729-5-04 of the Ohio Administrative Code.
- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) of the Findings of Fact constitutes having been disciplined by the Ohio State Board of Pharmacy pursuant to Section 4729.16 of the Revised Code as provided in paragraph (E) of Rule 4729-5-04 of the Ohio Administrative Code.

ACTION OF THE BOARD

Pursuant to Section 4729.08 of the Ohio Revised Code and Rule 4729-5-04 of the Ohio Administrative Code, and on the basis of the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby denies the issuance of a certificate of registration or an identification card to practice pharmacy, and therefore, denies the Application for Examination as a Pharmacist submitted by James Brian Bird. Further, James Brian Bird may not submit an Application for Examination as a Pharmacist prior to January 1, 2025.

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

MOTION CARRIED.

SO ORDERED.



OHIO STATE BOARD OF PHARMACY

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

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-970117-025)

In The Matter Of:

JAMES BRIAN BIRD

1681 Maple Square N.E.

Bolivar, Ohio 44612

(D.O.B. 01/04/57)

INTRODUCTION

THE MATTER OF JAMES BRIAN BIRD CAME TO HEARING ON AUGUST 11, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: AMONTE B. LITTLEJOHN, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; JOSEPH J. MASLAK, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JAMES BRIAN BIRD WAS REPRESENTED BY WAYNE KEREK, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) David Gallagher, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) James Brian Bird, Respondent
- (2) Albert Weinstein, Pharmacists Rehabilitation Organization, Inc.
- (3) Scott Bernhardt, Sponsor, Narcotics Anonymous
- (4) Mimi Bird, Wife of Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity for Hearing letter dated January 17, 1997.
- (2) Exhibit 1A--Two-page Hearing Request letter dated February 13, 1997.
- (3) Exhibit 1B--Hearing Schedule letter dated February 21, 1997.

- (4) Exhibit 2--Application for Examination as a Pharmacist of James Brian Bird dated November 21, 1996.
- (5) Exhibit 2A--Copy of nineteen-page Indictment for sixty-five counts of Trafficking in Drugs in the State of Ohio, Tuscarawas County, Court of Common Pleas, Case No. 93CR040098, of James Brian Bird dated April 28, 1993.
- (6) Exhibit 2B--Copy of three-page Judgment Entry on Change of Plea in the Court of Common Pleas of Tuscarawas County, Ohio, Case No. 93CR040098, of James Brian Bird dated December 22, 1993.
- (7) Exhibit 2C--Copy of three-page Judgment Entry on Sentencing in the Court of Common Pleas of Tuscarawas County, Ohio, Case No. 93CR040098, of James Brian Bird dated February 25, 1994.
- (8) Exhibit 3--Copy of twelve-page Order of the State Board of Pharmacy, Docket No. D-930429-084, in the matter of James Brian Bird dated March 14, 1994.

Respondent's Exhibits:

- (1) Exhibit A1--Copy of letter from Verna E. Tilton dated May 7, 1996.
- (2) Exhibit A2--Copy of Quest Recovery Services Initial Treatment Plan of Brian Bird dated May 3, 1996.
- (3) Exhibit B--Copy of Quest Recovery Services Treatment Contract of J. Brian Bird dated September 20, 1996.
- (4) Exhibit C--Copy of Quest Recovery Services Summary of Treatment of J. Brian Bird signed September 20, 1996.
- (5) Exhibit D1--Two-page copy of Quest Recovery Services Comprehensive Assessment Summary of Brian J. Bird signed January 22, 1997.
- (6) Exhibit D2--Copy of letter from Verna Tilton dated August 6, 1997.
- (7) Exhibit E1--Copy of letter from Verna Tilton dated June 16, 1997.
- (8) Exhibit E2--Copy of letter from Verna Tilton dated June 16, 1997.
- (9) Exhibit F1--Copy of handwritten summary of J. Brian Bird dated July 28, 1996.
- (10) Exhibit F2--Two-page copy of handwritten summary of J. Brian Bird regarding the Ventilation Trap dated July 28, 1996.
- (11) Exhibit F3--Copy of handwritten summary of J. Brian Bird regarding Stress and Recovery dated August 19, 1996.
- (12) Exhibit F4--Two-page copy of handwritten summary of J. Brian Bird regarding the Effects on the Family dated August 19, 1996.
- (13) Exhibit F5--Copy of page fifteen of "Anxiety Disorders" by David D. Burns, M.D., Copyright 1980, regarding Checklist of Cognitive Distortions.
- (14) Exhibit F6--Copy of page twenty of "Anxiety Disorders" by David D. Burns, M.D., Copyright 1980, regarding Checklist of Self-Defeating Beliefs.
- (15) Exhibit G--Two-page copy of Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of J. Brian Bird dated September 16, 1996.
- (16) Exhibit H--Copy of list of attendance dates of the North-East Ohio Recovering Pharmacists meetings of J. Brian Bird dated from February 20, 1995, through July 21, 1997.
- (17) Exhibits I1 through I25--Twenty-five copies of pages from weekly calendars dated from February 20, 1995, through July 27, 1997.
- (18) Exhibits J1 through J94--Ninety-four copies of pages from weekly calendars dated from January 2, 1995, through October 20, 1996.
- (19) Exhibits J96 through J136--Forty-one copies of pages from weekly calendars dated from October 21, 1996, through August 3, 1997.
- (20) Exhibits K--Two-page copy of letter from Bruce Hensley dated June 24, 1997.
- (21) Exhibit L1--Copy of Affidavit of Patti Schott dated August 6, 1997.

- (22) Exhibit L2--Copy of four pages of urine drug screen documentation of Brian James Bird dated January 26, 1995, and January 27, 1995.
- (23) Exhibit L3--Copy of four pages of urine drug screen documentation of James Brian Bird dated June 13, 1995, through June 15, 1995.
- (24) Exhibit L4--Copy of three pages of urine drug screen documentation of James Brian Bird dated August 29, 1995, through August 31, 1995.
- (25) Exhibit L5--Copy of four pages of urine drug screen documentation of James Brian Bird dated November 1, 1995, and November 2, 1995.
- (26) Exhibit L6--Copy of four pages of urine drug screen documentation of James Brian Bird dated January 8, 1996, and January 9, 1996.
- (27) Exhibit L7--Copy of four pages of urine drug screen documentation of James Brian Bird dated March 5, 1996, and March 6, 1996.
- (28) Exhibit L8--Copy of four pages of urine drug screen documentation of James Brian Bird dated May 31, 1996, through June 3, 1996.
- (29) Exhibit L9--Copy of four pages of urine drug screen documentation of James Brian Bird dated June 20, 1996, and June 21, 1996.
- (30) Exhibit L10--Copy of four pages of urine drug screen documentation of James Brian Bird dated August 16, 1996, through August 18, 1996.
- (31) Exhibit L11--Copy of four pages of urine drug screen documentation of James Brian Bird dated September 13, 1996, through September 16, 1996.
- (32) Exhibit L12--Copy of four pages of urine drug screen documentation of James Brian Bird dated November 14, 1996, and November 15, 1996.
- (33) Exhibit L13--Copy of four pages of urine drug screen documentation of James Brian Bird dated December 11, 1996, and December 12, 1996.
- (34) Exhibit L14--Copy of four pages of urine drug screen documentation of James Brian Bird dated January 3, 1997, and January 4, 1997.
- (35) Exhibit L15--Copy of four pages of urine drug screen documentation of James Brian Bird dated February 19, 1997, and February 20, 1997.
- (36) Exhibit L16--Copy of four pages of urine drug screen documentation of James Brian Bird dated March 21, 1997, through March 23, 1997.
- (37) Exhibit L17--Copy of four pages of urine drug screen documentation of James Brian Bird dated April 11, 1997, through April 14, 1997.
- (38) Exhibit L18--Copy of four pages of urine drug screen documentation of James Brian Bird dated May 20, 1997, and May 21, 1997.
- (39) Exhibit L19--Copy of five pages of urine drug screen documentation of James Brian Bird dated July 1, 1997, through July 23, 1997.
- (40) Exhibit L20--Copy of four pages of urine drug screen documentation of James Brian Bird dated July 17, 1997, and July 18, 1997.
- (41) Exhibits M1 through M15--Copies of fifteen continuing education certifications of James Brian Bird dated February 12, 1993, through August 30, 1996.
- (42) Exhibits N1 through N3--Copies of three receipts from the Tuscarawas County Clerk of Courts for payment of fines in the matter of State vs. James Brian Bird, Case No. 93CR040098, dated June 18, 1993; February 23, 1994; and April 12, 1994.
- (43) Exhibit O--Copy of Expiration of Sentence of James Bird, Institution Number 288-243 dated October 28, 1994.
- (44) Exhibit P--Copy of Journal Entry in the (sic Tuscarawas) Court of Common Pleas, Case No. 93CR040098, of James Brian Bird dated December 18, 1996.
- (45) Exhibit Q--Copy of Certificate of Appreciation of James B. Bird dated October 3, 1996.
- (46) Exhibit R1--Copy of letter from Robert Kerek dated July 31, 1997.
- (47) Exhibit R2--Copy of letter from David M. Boyer dated July 31, 1997.
- (48) Exhibit R3--Copy of letter from Albert I. Weinstein dated July 23, 1997.
- (49) Exhibit R4--Copy of letter from Mark Buker dated July 1, 1997.

- (50) Exhibit R5--Copy of letter from Leslie B. Coons, not dated.
- (51) Exhibit R6--Copy of letter from Jim Brearley, not dated.
- (52) Exhibit R7--Copy of letter from Rev. Patrick A. Toner, not dated.
- (53) Exhibit R8--Copy of two-page letter from Jo Dusi dated October 12, 1996.
- (54) Exhibit R9--Copy of letter from Scott Bernhardt, not dated.
- (55) Exhibit R10--Copy of two-page letter from Angela B. DeMatteis, not dated.
- (56) Exhibit R11--Copy of two-page letter from Mimi Bird, not dated.
- (57) Exhibit S--Letter from Greg L. Didonato dated August 7, 1997.

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 James Brian Bird submitted an application for Examination as a Pharmacist on or about November 27, 1996.
- (2) Records further indicate that on or about March 14, 1994, the Board found the following to be fact:
 - (a) Records of the State Board of Pharmacy indicate that James Brian Bird was originally licensed to practice pharmacy in the state of Ohio by reciprocity on December 2, 1980, and was summarily suspended on April 29, 1993. Further, James Brian Bird admitted in his testimony that he was the responsible pharmacist during all relevant time periods as stated in the paragraphs below.
 - (b) James Brian Bird did, on or about December 22, 1992, and dates prior thereto, practice pharmacy at the Medicine Shoppe, 555 W. High Street, New Philadelphia, Ohio, when addicted to drugs. James Brian Bird admitted that he abused Percodan, Percocet, Tylox, and their generic equivalents. Thus, he is addicted to or abusing liquor and/or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.
 - (c) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 115 units of Dexedrine 5mg, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
 - (d) James Brian Bird, as the responsible pharmacist did, between August 10, 1991, and December 2, 1992, knowingly sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, a controlled substance in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird and/or a pharmacist under his control sold 172 units of Xanax 0.25mg, a schedule IV controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.

- (e) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold, for his own purposes, 65 units of Percodan and/or generic equivalents, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.

sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 755 units of Tylox and/or generic equivalents, and 156 units of Dilaudid 4mg, schedule II controlled substances, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (g) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 300 units of APAP 325mg/Codeine 30mg, and 990ml of Hycodan Syrup, schedule III controlled substances, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (h) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 3,600 units of Diazepam 5mg, a schedule IV controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (i) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding one hundred times the bulk amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 5,645 units of Percocet and/or generic equivalents, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(10) of the Ohio Revised Code.

- (j) James Brian Bird did, between April 30, 1990, and April 30, 1993, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold the following schedule IV controlled substances without prescriptions and/or without a legitimate medical purpose:

Drug

Quantity

Adipex-P 3.75mg	292
Phentermine 37.5mg	1150
Phentermine 30mg	357

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (k) James Brian Bird did, between April 30, 1990, and April 30, 1993, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Ohio Revised Code, to wit: James Brian Bird or a pharmacist under his control sold 42 units of Ionimin 30mg, a schedule IV controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.
- (l) James Brian Bird did, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: James Brian Bird created false or forged prescriptions in the name of patient Linda Hanner, not authorized by a practitioner for the following dangerous drugs:

Rx No.	Type	Date	Drug	Quantity
694394	original	03/05/92	Ceclor 250mg	21
694394	refill	08/07/92	Ceclor 250mg	21
701111	original	06/23/92	Seldane 60mg	20
701111	refill	07/11/92	Seldane 60mg	20
701111	refill	07/27/92	Seldane 60mg	20
701111	refill	08/25/92	Seldane 60mg	15
701111	refill	08/31/92	Seldane 60mg	15
701111	refill	09/11/92	Seldane 60mg	15
701111	refill	10/05/92	Seldane 60mg	15
701111	refill	11/19/92	Seldane 60mg	10
707033	original	10/05/92	Seldane-D	15
707033	refill	10/09/92	Seldane-D	15

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

- (m) James Brian Bird did, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: James Brian Bird created false or forged telephone prescriptions in the name of patient Willard Hanner, not authorized by a practitioner for the following dangerous drugs:

Rx No.	Type	Date	Drug	Quantity
667874	original	01/21/91	Colfed A	12
671672	original	03/08/91	Doxycycline 100mg	11
671672	refill	06/27/91	Doxycycline 100mg	11
680953	original	08/08/91	Cipro 500mg	14
680953	refill	08/15/91	Cipro 500mg	14
680953	refill	11/07/91	Cipro 500mg	14
681938	original	08/29/91	Tetracycline-250	40
681938	refill	04/08/92	Tetracycline-250	56

695035	original	03/16/92	Erythromycin-250	40
695035	refill	03/26/92	Erythromycin-250	40
695035	refill	04/02/92	Erythromycin-250	40
701284	original	06/26/92	Cephalexin 250mg	28
701284	refill	10/15/92	Cephalexin 250mg	28
706417	original	09/25/92	Cipro 500mg	14
707660	original	10/15/92	Beconase AQ Nasal Spray 25mg	

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

- (n) James Brian Bird did, from on or about April, 1990, through February, 1993, furnish to another controlled substances when the conduct was not in accordance with Chapters 3719., 4715., 4729., 4731., and/or 4741. of the Ohio Revised Code, to wit: due to illegal sales of Diazepam 5mg, a schedule IV controlled substance, to Jean Lahmers, James Brian Bird caused her to become drug dependent. Such conduct is in violation of Section 2925.02(B) of the Ohio Revised Code.
- (o) James Brian Bird, as the responsible pharmacist did, between August 10, 1991, and December 2, 1992, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, a controlled substance in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird or a pharmacist under his control sold 480ml of Methadone oral solution 5mg/5ml, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
- (p) James Brian Bird, as the responsible pharmacist did, between August 10, 1991, and December 2, 1992, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, controlled substances in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird or a pharmacist under his control sold the following schedule II controlled substances without prescriptions and/or without a legitimate medical purpose:

Drug	Quantity
Methylphenidate 5mg	1,009
Methylphenidate Extended Release 20mg	201

Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.

- (q) James Brian Bird, as the responsible pharmacist did, between April 30, 1990, and April 30, 1993, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, a controlled substance in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird or a pharmacist under his control sold the

following controlled substances without prescriptions and/or without a legitimate medical purpose:

Drug	Schedule	Quantity
Methylphenidate 10mg	II	1,118
Xanax 0.5mg	IV	1,208
Xanax 1mg	IV	940

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (r) James Brian Bird did, on or about December 21, 1993, plea guilty in the Court of Common Pleas of Tuscarawas County, Ohio, to fifteen counts of Trafficking in Drugs, in violation of Section 2925.03(A)(1) of the Ohio Revised Code.

The Board concluded that James Brian Bird was guilty of a felony and gross immorality; guilty of dishonesty and unprofessional conduct in the practice of pharmacy; addicted to and abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy; and guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of 3715.52 to 3715.72 or Chapters 2925., 3719., or 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code. Therefore, the Board revoked James Brian Bird's license, No. 03-2-13744, to practice pharmacy in the state of Ohio.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2)(r) of the Findings of Fact constitutes being guilty of a felony as provided in paragraph (A) of Rule 4729-5-04 of the Ohio Administrative Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2)(r) of the Findings of Fact constitutes having been convicted of violating state or federal pharmacy or drug laws as provided in paragraph (B) of Rule 4729-5-04 of the Ohio Administrative Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2)(b) through (2)(r) of the Findings of Fact constitute not being of good moral character and habits as provided in paragraph (C) of Rule 4729-5-04 of the Ohio Administrative Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2)(b) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs as provided in paragraph (D) of Rule 4729-5-04 of the Ohio Administrative Code.
- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes having been disciplined by the Ohio State Board of Pharmacy pursuant to Section 4729.16 of the Revised Code as provided in paragraph (E) of Rule 4729-5-04 of the Ohio Administrative Code.

ACTION OF THE BOARD

Pursuant to Section 4729.08 of the Ohio Revised Code, and the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby denies the issuance of a certificate of registration or an identification card, and therefore denies the Application for Examination as a Pharmacist submitted by James Brian Bird.

Further, James Brian Bird may not apply for examination as a pharmacist before one year from the date of this Order.

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

MOTION CARRIED.

SO ORDERED.