



# OHIO STATE BOARD OF PHARMACY

77 South High Street, 17th Floor; Columbus, Ohio 43266-0320

-Equal Opportunity Employer and Service Provider-

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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-960612-065)

In The Matter Of:

**DAVID SCOTT HERRMANN, R.Ph.**

2906 Orlando Avenue  
Middletown, Ohio 45042  
(R.Ph. No. 03-2-14021)

### INTRODUCTION

THE MATTER OF DAVID SCOTT HERRMANN CAME TO HEARING ON DECEMBER 4, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; JOHN L. HANNA, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

DAVID SCOTT HERRMANN WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

### SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Fred Williams, Ohio State Board of Pharmacy
- (2) David Scott Herrmann, Respondent

Respondent's Witnesses:

- (1) Kenneth W. Herrmann, Cincinnati, Ohio

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity for Hearing letter dated June 12, 1996.
- (2) Exhibit 1A--Hearing Request letter dated July 9, 1996.
- (3) Exhibit 1B--Hearing Schedule letter dated July 16, 1996.
- (4) Exhibit 1C--Two-page letter from Kenneth W. Herrmann dated April 29, 1996.

- (5) Exhibit 1D--Pharmacist File Front Sheet of David Scott Herrmann showing original date of registration as March 2, 1981; and Renewal Application for Pharmacist License, number 03-2-14021, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of David Scott Herrmann dated June 28, 1995.
- (6) Exhibit 2--Copy of two-page handwritten statement of David S. Herrmann dated February 2, 1996.
- (7) Exhibit 3--Three-page handwritten statement of David Herrmann signed and notarized on February 6, 1996.

Respondent's Exhibits:

- (1) Exhibit A--Three-page Opening Statement of David Scott Herrmann dated December 4, 1996.
- (2) Exhibit B--Two-page Statement of K. W. Herrmann, not dated.
- (3) Exhibit C--Two-page letter from Pastor Randall Wheeler dated November 14, 1996; and Certificate of Completion for Living Word's Potter's House of David Herrmann dated October 30, 1996.
- (4) Exhibit D--letter from Jennifer M. Prichard dated November 24, 1996.
- (5) Exhibit E--Two-page letter from Stuart A. Robinson dated November 19, 1996.
- (6) Exhibit F--Letter from Thomas M. Beebe dated November 9, 1996.
- (7) Exhibit G--Letter from William E. Tompkins dated November 25, 1996.
- (8) Exhibit H--Closing Statement of David S. Herrmann dated December 4, 1996.

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 David Scott Herrmann was originally licensed to practice pharmacy in the state of Ohio on March 2, 1981; and on June 12, 1996, in accordance with Section 3719.121(B) of the Ohio Revised Code, the Board summarily suspended the license of David Scott Herrmann.
- (2) David Scott Herrmann did, on or about February 1, 1996, knowingly use a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: David Scott Herrmann was observed drinking Hydrocodone Syrup, a schedule III controlled substance, from a stock bottle while practicing pharmacy when he did not have a prescription for the drug. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (3) David Scott Herrmann did, on or about February 2, 1996, knowingly use a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: David Scott Herrmann was observed on three different occasions drinking Hydrocodone Syrup, a schedule III controlled substance, from a stock bottle while practicing pharmacy when he did not have a prescription for the drug. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.

- (4) David Scott Herrmann did, on or about the two years immediately preceding February 5, 1996, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Phar-Mor #242, beyond the express or implied consent of the owner, to wit: David Scott Herrmann admitted to stealing and/or consuming the following drugs while practicing pharmacy:

<u>Drug</u>	<u>Quantity</u>
Codclear DH	2 pints
Codclear DH (generic)	3 pints
Promethazine with Codeine	2 pints
Prometh VC with Codeine	2 pints
Novahistine (generic)	1 pint
Tussionex Suspension	1 pint
Vicodin	20 tablets
Vicodin (generic)	100 tablets
Vicodin ES	5 tablets
Vicodin ES (generic)	20 tablets
Lortab (generic)	20 tablets
Ambien 10mg	25 tablets
Histussin HC	1 pint
Histussin HC (generic)	1 pint

Further, David Scott Herrmann admitted to Board agents that he took these drugs because of the "undue pressures" at the pharmacy, such as "filling up to and exceeding 300 prescriptions per day." Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

#### CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (4) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (4) of the Findings of Fact constitute abusing drugs to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued June 12, 1996.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy hereby reinstates the pharmacist identification card of David Scott Herrmann to practice pharmacy in the state of Ohio and places him on probation for two years, effective as of the date of the mailing of this Order, with the following conditions:

- (A) David Scott Herrmann must obtain counseling by a licensed psychologist on at least a quarterly basis.
- (B) David Scott Herrmann must enter into a contract with a limited treatment provider acceptable to the Board for a period of not less than two years and submit a copy of the signed contract to the Board office no later than January 10, 1997. The contract must provide that:
  - (1) random, **observed** urine screens shall be conducted at least once every three months. The urine drug screen report must include testing for the presence of opiates and benzodiazepines, and must report testing for creatinine as the dilutional standard or specific gravity. The treatment provider shall report positive results immediately to the Board;
  - (2) regular attendance, a minimum of three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting is required during outpatient treatment and/or during aftercare;
  - (3) the intervener/sponsor shall provide copies of all urine screens to the Ohio Board of Pharmacy in a timely fashion; and
  - (4) the program shall immediately report to the Ohio Board of Pharmacy any violations of the contract and/or lack of cooperation.
- (C) David Scott Herrmann must submit quarterly progress reports to the Board; due January 10; April 10; July 10; and October 10; of each year of probation, that include:
  - (1) evidence of counseling sessions with the psychologist;
  - (2) the written report and documentation provided by the treatment program pursuant to the contract, and
  - (3) a written description of his progress towards recovery and what he has been doing during the previous three months.
  - (4) the first report shall be submitted by April 10, 1997, and cover a time period from the effective date of the contract with the limited treatment provider through March 31, 1997.

(D) Other terms of probation are as follows:

- (1) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that the pharmacist identification card of David Scott Herrmann is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns.
- (2) David Scott Herrmann may not serve as a responsible pharmacist.
- (3) David Scott Herrmann may not destroy, or may not assist in or witness the destruction of, controlled substances.
- (4) David Scott Herrmann must abide by the contract from the treatment provider and any violation must be reported to the Board immediately.
- (5) David Scott Herrmann must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (6) David Scott Herrmann must abide by the rules of the Ohio State Board of Pharmacy.
- (7) David Scott Herrmann must comply with the terms of this Order.

David Scott Herrmann is hereby advised that the Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-6/Nay-0).

MOTION CARRIED.

SO ORDERED.

It is hereby certified by this Board that the above language is a copy of the Order entered upon its journal in this case.

Section 119.12 of the Revised Code authorizes an appeal from this Order. Such an appeal may be taken to the court of common pleas in the county in which your place of business is located or to said court of the county in which you reside. If you do not have a place of business in Ohio and are not a resident of Ohio, you may appeal to the Court of Common Pleas in Franklin County, Ohio.

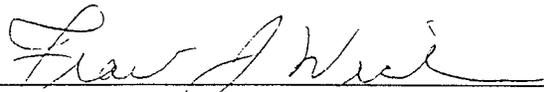
DAVID SCOTT HERRMANN, R.Ph.  
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Order of the Board

Such an appeal, setting forth the order appealed from and the grounds of the appeal, must be commenced by the filing of a Notice of Appeal with the State Board of Pharmacy and the appropriate court within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

CERTIFIED MAIL  
Return Receipt  
#Z 725 455 713

ORDER MAILED  
AND EFFECTIVE: DECEMBER 17, 1996

By:   
Franklin Z. Wickham, R.Ph., M.S.  
Executive Director

FZW/so

xc: Mary L. Hollern, Assistant Attorney General



# OHIO STATE BOARD OF PHARMACY

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## SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING

June 12, 1996

*Exhibit  
#1*

David Scott Herrmann, R.Ph.  
2906 Orlando Avenue  
Middletown, Ohio 45042

Re: Ohio Registered Pharmacist  
Number 03-2-14021

Dear Pharmacist:

Records of the Board indicate that you are a pharmacist registered by this Board to practice pharmacy in the state of Ohio.

In accordance with Section 3719.121(B) of the Ohio Revised Code, the Board has determined that there is clear and convincing evidence that the continuation of your professional practice and/or your method of distributing controlled substances presents a danger of immediate and serious harm to others. The reasons for the Board's action are that you have committed any and/or all of the following acts:

- (1) You did, on or about February 1, 1996, knowingly use a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: you were observed drinking Hydrocodone Syrup, a schedule III controlled substance, from a stock bottle while practicing pharmacy when you did not have a prescription for the drug. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (2) You did, on or about February 2, 1996, knowingly use a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: you were observed on three different occasions drinking Hydrocodone Syrup, a schedule III controlled substance, from a stock bottle while practicing pharmacy when you did not have a prescription for the drug. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (3) You did, on or about the five years immediately preceding February 5, 1996, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Phar-Mor #242, beyond the express or implied consent of the owner, to

wit: you have admitted to stealing and/or consuming the following drugs while practicing pharmacy:

<u>Drug</u>	<u>Quantity</u>
Codclear DH	2 pints
Codclear DH (generic)	3 pints
Promethazine with Codeine	2 pints
Prometh VC with Codeine	2 pints
Novahistine (generic)	1 pint
Tussionex Suspension	1 pint
Vicodin	20 tablets
Vicodin (generic)	100 tablets
Vicodin ES	5 tablets
Vicodin ES (generic)	20 tablets
Lortab (generic)	20 tablets
Ambien 10mg	25 tablets
Histussin HC	1 pint
Histussin HC (generic)	1 pint

Further, you admitted to Board agents that you took these drugs because of the “undue pressures” at the pharmacy, such as “filling up to and exceeding 300 prescriptions per day.” Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

YOU ARE HEREBY NOTIFIED that Section 3719.121(B) of the Ohio Revised Code states, in pertinent part:

(B) The license or registration of a ... pharmacist, ... may be suspended without a prior hearing by the board under which he has been licensed or registered if the board determines that there is clear and convincing evidence that continuation of his professional practice or his method of distributing controlled substances presents a danger of immediate and serious harm to others. ...

WHEREFORE, PURSUANT TO SECTION 3719.121(B) OF THE OHIO REVISED CODE, YOU ARE HEREBY NOTIFIED THAT YOUR REGISTRATION AND LICENSE TO PRACTICE PHARMACY IN THE STATE OF OHIO IS HEREBY SUSPENDED. FURTHER, PURSUANT TO RULE 4729-9-01(F) OF THE OHIO ADMINISTRATIVE CODE, DURING THIS TERM OF SUSPENSION YOU MAY NOT BE EMPLOYED BY OR WORK IN ANY FACILITY LICENSED BY THE BOARD OF PHARMACY TO POSSESS OR DISTRIBUTE DANGEROUS DRUGS. This suspension shall remain in effect until an adjudicatory hearing is held by the Board under Chapter 119. of the Revised Code, during which time you may not engage in the practice of pharmacy.

YOU ARE FURTHER NOTIFIED that Section 4729.16 of the Ohio Revised Code states, in pertinent part:

(A) The state board of pharmacy, after notice and hearing in accordance with sections 119.01 to 119.13 of the Revised Code, may revoke, suspend, place on probation, or refuse to grant or renew an identification card under this chapter, or may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Revised Code for a similar offense, or in the case of a violation of a section of the Revised Code that does not bear a penalty, a monetary penalty or forfeiture of not more than five hundred dollars, if the board finds a pharmacist or pharmacy intern:

- (1) Guilty of a felony or gross immorality;
- (2) Guilty of dishonesty or unprofessional conduct in the practice of pharmacy;
- (3) Addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy;
- (4) Has been convicted of a misdemeanor related to, or committed in, the practice of pharmacy;
- (5) Guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code;
- (6) Guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy;
- (7) Guilty of knowingly lending his name to an illegal practitioner of pharmacy or having professional connection with an illegal practitioner of pharmacy; or
- (8) Guilty of dividing or agreeing to divide remuneration made in the practice of pharmacy with any other individual, including, but not limited to, a practitioner or any owner, manager, or employee of a health care facility, rest home, or nursing home.

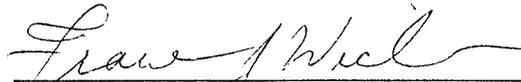
IF YOU REQUEST A HEARING within 30 days of the time of the mailing of this notice, such will be afforded. Requests shall be mailed to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320. You may appear at such hearing in person, by or with your attorney, or you may present your position, arguments, or contentions in writing; and at this hearing, you may present evidence and examine any witnesses appearing for and against you.

YOU ARE FURTHER ADVISED that if you do not request such a hearing within thirty (30) days of the mailing of this notice, the State Board of Pharmacy, upon consideration of the aforementioned allegations against you, may take action without such a hearing.

David Scott Herrmann, R.Ph.  
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Summary Suspension

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

BY ORDER OF THE STATE BOARD OF PHARMACY



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Franklin Z. Wickham, R.Ph., M.S.  
Executive Director

CERTIFIED MAIL  
Return Receipt

DLR:so (D-960612-065)

cc: Mary L. Hollern, Assistant Attorney General