



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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SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

(Docket No. D-981208-024)

In The Matter Of:

DAVID MICHAEL SUNSHEIN, R.Ph.

566 East Dorothy Lane

Kettering, OH 45419

(R.Ph. No. 03-2-15284)

This Settlement Agreement is entered into by and between David Michael Sunshein and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

David Michael Sunshein enters into this Agreement being fully informed of his rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudication hearing on the issues contained herein.

David Michael Sunshein is knowingly and voluntarily acknowledging that, in order to settle the disciplinary charges that have been filed by the Board against him and in order to obviate the need to conduct an administrative hearing to consider possible disciplinary sanctions against David Michael Sunshein's license to practice pharmacy in the state of Ohio, this Agreement is entered into on the basis of the following stipulations, admissions, and understandings:

- (A) The Ohio State Board of Pharmacy is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, place on probation, refuse to grant or renew an identification card, or impose a monetary penalty on the license holder for violation of any of the enumerated grounds.
- (B) David Michael Sunshein neither admits nor denies the allegations stated in the Notice; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same:
 - (1) Records of the Board of Pharmacy indicate that David Michael Sunshein was originally licensed in the state of Ohio on August 10, 1983, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
 - (2) David Michael Sunshein is addicted to liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy; to wit: David Michael Sunshein admitted to Board agents that he is addicted to

hydrocodone with APAP. David Michael Sunshein stated that after having two surgeries on his back, he became dependent on hydrocodone, ingesting thirty to fifty tablets per day. Further, David Michael Sunshein has admitted to abusing Ultram on a regular basis in an amount approximating thirty per week. David Michael Sunshein obtained these dangerous drugs by stealing them from four different pharmacies where he was employed; and, David Michael Sunshein created telephone prescriptions to cover for the theft of drugs. Such conduct indicates that David Michael Sunshein falls within the ambit of Sections 3719.121(A); 3719.121(B); and, 4729.16(A)(3) of the Ohio Revised Code.

- (3) David Michael Sunshein did, on or about June 23, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole sixty-four unit doses of Ultram 50mg, in violation of Section 2913.02 of the Ohio Revised Code.
- (4) David Michael Sunshein did, on or about August 4, 1997, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole forty unit doses of Propoxyphene N-100, a schedule IV controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.
- (5) David Michael Sunshein did, on or about August 12, 1997, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole twelve unit doses of Hydrocodone Bitartrate 5mg/Acetaminophen 500mg, a schedule III controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.
- (6) David Michael Sunshein did, on or about November 5, 1997, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole twenty-two unit doses of Propoxyphene N-100, a schedule IV controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.
- (7) David Michael Sunshein did, on or about November 10, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole eight unit doses of Ultram 50mg, in violation of Section 2913.02 of the Ohio Revised Code.

- (8) David Michael Sunshein did, on or about December 1, 1997, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole one Duragesic patch, a schedule II controlled substance, and six unit doses of MS Contin, also a schedule II controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.
- (9) David Michael Sunshein did, on or about January 22, 1998, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole five unit doses of Ultram 50mg, in violation of Section 2913.02 of the Ohio Revised Code.
- (10) David Michael Sunshein did, on or about February 27, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole forty unit doses of Oxycontin 20mg and forty unit doses of Oxycodone with APAP, schedule II controlled substances, in violation of Section 2913.02 of the Ohio Revised Code.
- (11) David Michael Sunshein did, on or about March 9, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances and/or dangerous drugs, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole forty unit doses of Oxycontin 20mg, a schedule II controlled substance, and sixty-six unit doses of Ultram 50mg, a dangerous drug, in violation of Section 2913.02 of the Ohio Revised Code.
- (12) David Michael Sunshein did, on or about May 27, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances and/or dangerous drugs, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole thirty-eight doses of Propoxyphene, a schedule IV controlled substance; nine unit doses Oxycontin 20mg, a schedule II controlled substance; twenty-five unit doses of Lortab, a schedule III controlled substance; four unit doses of Ty-Tab #3, a schedule III controlled substance; and forty-two unit doses of Ultram 50mg, a dangerous drug, in violation of Section 2913.02 of the Ohio Revised Code.
- (13) David Michael Sunshein did, on or about June 15, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole twenty-eight Oxycodone with APAP, a schedule II controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.

- (14) David Michael Sunshein did, on or about August 13, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole fourteen unit doses of Diazepam 10mg, a schedule IV controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.
- (15) David Michael Sunshein did, on or about October 6, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole seven unit doses of Ty-Tab #3, a schedule III controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.
- (16) David Michael Sunshein did, on or about October 20, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole four unit doses of Propoxyphene N-100, a schedule IV controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.
- (17) David Michael Sunshein did, on or about June 23, 1997, through October 20, 1998, while employed as a public official, commit a theft offense, as defined in division (K) of Section 2913.01 of the Revised Code, when the property was owned by the state or any political subdivision thereof, to-wit: while working as a pharmacist with the Montgomery County Coroner's Office/Crime Lab, David Michael Sunshein stole drugs accompanying deceased persons as they were admitted to the Coroner's Office. The following items were stolen by David Michael Sunshein while employed as a public official:

<u>Date</u>	<u>Quantity</u>	<u>Drug</u>
06/23/97	64	Ultram 50mg
08/04/97	40	Propoxyphene N-100
08/12/97	12	Hydrocodone 5/500
11/05/97	22	Propoxyphene N-100
11/10/97	8	Ultram 50mg
12/01/97	1	Duragesic Patch
12/01/97	6	MS Contin
01/22/98	5	Ultram 50mg
02/27/98	40	Oxycontin 20mg
02/27/98	40	Ultram 50mg
03/09/98	4	Oxycontin 20mg
03/09/98	66	Ultram 50mg
05/27/98	38	Propoxyphene N-100

<u>Date</u>	<u>Quantity</u>	<u>Drug</u>
05/27/98	9	Oxycontin 20mg
05/27/98	41	Ultram 50mg
05/27/98	25	Lortab
05/27/98	4	Ty-Tab #3
06/15/98	28	Oxycodone APAP
08/13/98	14	Diazepam 10mg
10/06/98	7	Ty-Tab #3
10/20/98	4	Propoxyphene N-100

Such conduct is in violation of Section 2921.41 of the Ohio Revised Code.

- (18) David Michael Sunshein did, from May 28, 1997, through November 29, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of his employer, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole the following controlled substances from Cub Pharmacy in Trotwood, Ohio:

<u>Quantity</u>	<u>Drug</u>
112	Hydrocodone Bitartrate 7.5mg/APAP 500mg
70	Hydrocodone Bitartrate 10mg/APAP 500mg
95	Hydrocodone Bitartrate 7.5mg/APAP 650mg
358	Hydrocodone Bitartrate 10mg/APAP 650mg
438	Hydrocodone Bitartrate 7.5mg/APAP 750mg

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

- (19) David Michael Sunshein did, on or about May 28, 1997, to November 29, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of his employer, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole the following controlled substances from Cub Pharmacy in Huber Heights, Ohio:

<u>Quantity</u>	<u>Drug</u>
667	Hydrocodone Bitartrate 7.5mg/APAP 500mg
332	Hydrocodone Bitartrate 10mg/APAP 500mg
118	Hydrocodone Bitartrate 7.5mg/APAP 650mg
312	Hydrocodone Bitartrate 10mg/APAP 650mg
131	Hydrocodone Bitartrate 7.5mg/APAP 750mg

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

- (20) David Michael Sunshein did, on or about May 28, 1997, through November 29, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of his employer, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole the following controlled substances from Cub Pharmacy in Centerville, Ohio:

<u>Quantity</u>	<u>Drug</u>
1,644	Hydrocodone Bitartrate 7.5mg/APAP 500mg
131	Hydrocodone Bitartrate 7.5mg/APAP 650mg
266	Hydrocodone Bitartrate 10mg/APAP 650mg
1,142	Hydrocodone Bitartrate 7.5mg/APAP 750mg

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

- (21) David Michael Sunshein did, on or about May 28, 1997, through November 29, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of HIS employer, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole the following controlled substances from Cub Pharmacy in Miamisburg, Ohio:

<u>Quantity</u>	<u>Drug</u>
67	Hydrocodone Bitartrate 7.5mg/APAP 500mg
141	Hydrocodone Bitartrate 7.5mg/APAP 650mg
191	Hydrocodone Bitartrate 10mg/APAP 650mg
1,630	Hydrocodone Bitartrate 7.5mg/APAP 750mg
1,426	Hydrocodone Bitartrate 5mg/APAP 500mg

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

- (22) David Michael Sunshein did, on or about April 24, 1997, through February 22, 1998, knowingly make false statements in a prescription, order, report, or record required by Chapter 3719. or 4729. of the Revised Code, to-wit: on five separate occasions, David Michael Sunshein created false prescriptions in the name of Michael Spurlock in order to cover for his theft of drugs from Cub Pharmacy in Huber Heights, Ohio:

<u>Date</u>	<u>Rx No.</u>	<u>Qty.</u>	<u>Drug</u>
04/24/97	4121358	50	Hydrocodone Bitartrate 10mg/APAP 650mg
05/11/97	4121508	60	Hydrocodone Bitartrate 10mg/APAP 650mg
07/20/97	4122027	60	Hydrocodone Bitartrate 10mg/APAP 650mg
09/30/97	4122548	40	Hydrocodone Bitartrate 10mg/APAP 500mg
02/22/98	4123564	60	Hydrocodone Bitartrate 7.5mg/APAP 500mg

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

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, David Michael Sunshein knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) The removal of the Summary Suspension Order issued December 8, 1998, pursuant to Section 3719.121(B) of the Ohio Revised Code.

- (B) The indefinite suspension of his pharmacist identification card, No. 03-2-15284.
- (1) Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, David Michael Sunshein 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.
 - (2) Division (B) of Section 4729.16 of the Revised Code provides 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 the notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.
 - (3) David M. Sunshein is hereby advised that if reinstatement is not achieved prior to three years from the effective date of this Agreement he must take and successfully complete the "NAPLEX" examination or its board-approved equivalent.
 - (4) David M. Sunshein must comply with the requirements for renewal of a pharmacist identification card pursuant to Rule 4729-7-02 of the Ohio Administrative Code.
- (C) One year after the effective date of this Agreement, or thereafter, the Board will consider any petition filed by David M. Sunshein for a hearing, pursuant to Revised Code Chapter 119. of the Ohio Revised Code, upon the question of the reinstatement of his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
- (1) David M. Sunshein must enter into a contract with a limited treatment provider acceptable to the Board for a period of not less than five years from the effective date of this Agreement and, upon signing, submit a copy of the contract to the Board office. The contract must provide:
 - (a) Random, **observed** urine drug screens shall be conducted at least every three months.
 - (i) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.
 - (ii) Results of urine screens must be negative. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract and probation.

- (b) The intervener/sponsor shall provide copies of all urine screens to the Ohio Board of Pharmacy in a timely fashion.
- (c) Regular attendance, a minimum of three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting is required.
- (d) The program shall immediately report to the Ohio Board of Pharmacy any violations of the contract and/or lack of cooperation.

If, in the judgment of the Board, David Michael Sunshein appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to, at any time, revoke probation, modify the conditions of probation, and reduce or extend the period of probation, and/or the Board may institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

David Michael Sunshein acknowledges that he has had an opportunity to ask questions concerning the terms of this agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

David Michael Sunshein waives any and all claims or causes of action he may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. David Michael Sunshein waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

In the event the Board, in its discretion, does not adopt this Agreement as its Adjudication, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. David Michael Sunshein agrees that should the Board reject this Agreement and if this case proceeds to hearing, he will assert no claim that the Board was prejudiced by its review and discussion of this Agreement or of any information relating thereto.

This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the date of the Board President's signature below.



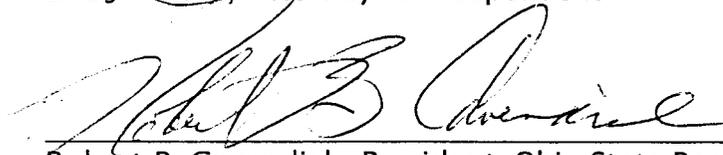
David Michael Sunshein, Respondent

9-23-99
Date of Signature



Eric J. Rinke, Attorney for Respondent

9/28/99
Date of Signature



Robert B. Cavendish, President, Ohio State Board of Pharmacy

10/4/99
Date of Signature



Sally Ann Steuk, Ohio Assistant Attorney General

10-4-99
Date of Signature



OHIO STATE BOARD OF PHARMACY

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ADDENDUM NOTICE

July 16, 1999

David Michael Sunshein, R.Ph.
566 East Dorothy Lane
Kettering, OH 45419

Re: Ohio Registered Pharmacist
License No. 03-2-15284

Dear Mr. Sunshein:

YOU ARE HEREBY NOTIFIED that, in addition to the allegations stated in the December 8, 1998 Summary Suspension Order/Notice of Opportunity letter and the Addendum Notice dated March 16, 1999, the following allegation will also be considered, as numbered:

- (23) You did, on or about June 8, 1999, plead guilty one count Theft in Office in violation of Section 2921.41 of the Ohio Revised Code, a felony of the fifth degree; one count Aggravated Possession of Drugs in excess of bulk in violation of Section 2925.11 of the Ohio Revised Code, a felony of the second degree; and, two counts of Illegal Processing of Drug Documents, in violation of Section 2925.23 of the Ohio Revised Code, a felony of the fifth degree. State of Ohio vs. David M. Sunshein, Case No. 99-CR-178, Montgomery County Common Pleas Court. Such conviction constitutes being guilty of a felony within the meaning of Section 4729.16(A) of the Ohio Revised Code.
- (24) You did, on or about May 13, 1999, plead guilty to Theft of Drugs in violation of Section 2913.02(A)(1) of the Ohio Revised Code, a felony of the fifth degree. State of Ohio vs. David M. Sunshein, Case No. 99 CR 50, Greene County Common Pleas Court. Such conviction constitutes being guilty of a felony within the meaning of Section 4729.16(A) of the Ohio Revised Code.

YOU ARE HEREBY ADVISED that under Division (A) of Section 4729.16 of the Ohio Revised Code: the Ohio State Board of Pharmacy, after notice and hearing in accordance with Chapter 119. of the Revised Code, may revoke, suspend, place on probation, or refuse to grant or renew an identification card, 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 the pharmacist or pharmacy intern unfit to practice pharmacy;
- (4) Has been convicted of a misdemeanor related to, or committed in, the practice of pharmacy;
- (5) Guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of this chapter, sections 3715.52 to 3715.72 of the Revised Code, or Chapter 2925. or 3719. of the Revised Code;
- (6) Guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy;
- (7) Guilty of knowingly lending the pharmacist's or pharmacy intern's name to an illegal practitioner of pharmacy or having professional connection with an illegal practitioner of pharmacy;
- (8) Guilty of dividing or agreeing to divide remuneration made in the practice of pharmacy with any other individual, including, but not limited to, any licensed health professional authorized to prescribe drugs or any owner, manager, or employee of a health care facility, residential care facility, or nursing home;
- (9) Has violated the terms of a consult agreement entered into pursuant to section 4729.39 of the Revised Code.

IN ACCORDANCE WITH THE SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY letter dated December 8, 1998, the Addendum Notice dated March 16, 1999, and pursuant to your adjudication hearing scheduled for August 3, 1999, you may appear at such hearing in person, by your attorney, Eric J. Plinke, Esq., or by such other representative as is permitted to practice before the agency, or you may present your position, arguments or contentions in writing; and, at this hearing, you may also present evidence and examine any witnesses appearing for and against you.

If you wish to request a continuance in this matter, such request should be sent by certified mail, return receipt requested, to the offices of the Ohio State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320. However, you must submit such request prior to fourteen (14) days from the date of the hearing. The request will be

DAVID MICHAEL SUNSHEIN, R.Ph.

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Addendum Notice

presented to the Board for consideration and you will be notified as soon as practical regarding the request. If you have any questions regarding this matter, feel free to contact the Board office.

BY ORDER OF THE STATE BOARD OF PHARMACY



William T. Winsley, M.S., R.Ph.
Executive Director

DLR:sr (D-981208-024)

CERTIFIED MAIL
Return Receipt

cc: Sally Ann Steuk, Assistant Attorney General
Eric J. Plinke, Esq., Attorney for Respondent; Porter, Wright, Morris & Arthur; 250 East
Fifth Street, Suite 2200; Cincinnati, OH 45202