



OHIO STATE BOARD OF PHARMACY

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-Equal Opportunity Employer and Service Provider-

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SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY (Docket No. D-980407-054)

In The Matter Of:

MICHAEL DAVID PERCIFUL, R.Ph.
7428 Green Valley Road
Mt. Vernon, Ohio 43050
(R.Ph. No. 03-2-16516)

This Settlement Agreement is entered into by and between Michael David Perciful 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.

Michael David Perciful 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.

Michael David Perciful 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 Michael David Perciful'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) Michael David Perciful neither admits nor denies the allegations stated in the Notice; however, the Board believes it has evidence sufficient to sustain the allegations and hereby adjudicates the same:
 - (1) Records of the Board indicate that Michael David Perciful were originally licensed in the state of Ohio on August 6, 1986, pursuant to examination, and on April 7, 1998, Michael David Perciful's license to practice pharmacy in Ohio was summarily suspended in accordance with Sections 3719.121(A) and 3719.121(B) of the Ohio Revised Code.
 - (2) Michael David Perciful is addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: on March 20, 1998, Michael David Perciful admitted to agents of the Board that he has stolen Cocaine HCl flakes from his employer

for personal use; Michael David Perciful has given controlled substances to his friends; Michael David Perciful has practiced pharmacy while being impaired; and that Michael David Perciful is drug dependent. On March 20, 1998, Michael David Perciful was found to be in possession of Cocaine HCl flakes, Methylphenidate 5mg, Valium 5mg, Ambien 5mg, and Marijuana. Such conduct indicates that Michael David Perciful falls within the ambit of Sections 3719.121(A); 3719.121(B); and, 4729.16(A)(3) of the Ohio Revised Code.

- (3) Michael David Perciful did, on or about March 17, 1998, knowingly sell or offer to sell a controlled substance in an amount less than the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, the drug being a schedule II controlled substance, to wit: Michael David Perciful sold a full 5gm bottle of Cocaine HCl flakes without a prescription and not for a legitimate medical purpose. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (4) Michael David Perciful did, between March 13, 1998, and March 17, 1998, knowingly sell or offer to sell a controlled substance in an amount exceeding five times the bulk amount but in amount less than fifty times bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, the drug being a schedule II controlled substance, to wit: Michael David Perciful sold 400 to 500 unit doses of Percocet without a prescription and not for a legitimate medical purpose. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (5) Michael David Perciful did, on or about March 20, 1998, knowingly obtain, possess, or use a controlled substances in an amount less than bulk when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Michael David Perciful ingested approximately .59gm of Cocaine HCl flakes while engaged in the practice of pharmacy; Michael David Perciful possessed one amber bottle containing approximately .06gm Cocaine HCl flakes, which he removed from his sock and surrendered to Board agents; and Michael David Perciful possessed one amber bottle containing approximately 4.35gm of Cocaine HCl flakes, which was removed from his vehicle and surrendered to Board agents. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (6) Michael David Perciful did, on or about March 20, 1998, knowingly obtain, possess, or use a controlled substance in an amount less than bulk when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Michael David Perciful surrendered to agents of the Board one plastic vial containing 57 unit doses of Methylphenidate 5mg which was removed from his vehicle. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (7) Michael David Perciful did, on or about March 20, 1998, knowingly obtain, possess, or use a controlled substance in an amount less than bulk when not

in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Michael David Perciful surrendered to agents of the Board one plastic vial containing 4 unit doses of Valium 5mg and 1 unit dose of Ambien 5mg which was removed from his vehicle. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.

- (8) Michael David Perciful did, on or about March 20, 1998, knowingly obtain, possess, or use a controlled substance in an amount less than bulk when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Michael David Perciful surrendered to agents of the Board one wooden box containing Marijuana which was removed from his vehicle. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (9) Michael David Perciful did, on or about March 20, 1998, knowingly possess drug paraphernalia when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Michael David Perciful surrendered to agents of the Board one brass pipe containing Marijuana residue and one wooden box containing Marijuana which was removed from his vehicle. Such conduct is in violation of Section 2925.14 of the Ohio Revised Code.
- (10) Michael David Perciful did, from on or about October 16, 1996, through March 20, 1998, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., 870 S. High Street, Columbus, Ohio 43206 beyond the express or implied consent of the owner, to wit: Michael David Perciful stole the following controlled substances:

<u>Drug</u>	<u>Schedule</u>	<u>Qty.</u>	<u>% of Supply</u>
Percocet (Oxycodone/APAP 325mg)	II	1,215	22%
Oxycodone/APAP 325mg	II	3,556	23.4%
Methylphenidate 5mg	II	123	12.7%
Ritalin 10mg (Methylphenidate 10mg)	II	210	13.1%
Methylphenidate 10mg	II	77	3%
Ritalin 20mg (Methylphenidate 20mg)	II	100	14.3%
Methylphenidate ER 20mg	II	201	12.5%
Valium 2mg (Diazepam 2 mg.)	IV	431	68.4%
Valium 5mg (Diazepam 5 mg.)	IV	541	6.7%
Valium 10mg (Diazepam 10 mg.)	IV	2,351	19.9%
Diazepam 5mg/ml (Injection)	IV	20ml	25%

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

- (11) Michael David Perciful did, on or between April 2, 1997, and August 21, 1997, by theft, acquire uncompleted, pre-printed prescription blanks, to wit: Michael David Perciful stole seven pre-signed, uncompleted prescription blanks from the Oncology Department at Park Medical Center, 1492 E. Broad Street, Columbus, Ohio 43205. Such conduct is in violation of Section 2925.23(C) of the Ohio Revised Code.

- (12) Michael David Perciful did, on or between April 2, 1997, and August 21, 1997, intentionally make, and knowingly possess a false and forged prescription, to wit: Michael David Perciful created and possessed in the files of Barney Zell Pharmacy, Inc. the following prescriptions:

<u>Rx No.</u>	<u>Drug</u>	<u>Qty.</u>	<u>Date</u>
422312	Cocaine 10% solution	100 ml	04/02/97
426779	Cocaine 10% solution	100 ml	05/16/97
3066	Cocaine 10% solution	100 ml	05/29/97
3089	Cocaine 10% solution	100 ml	06/27/97
431005	Cocaine 10% solution	100 ml	07/14/97
3110	Cocaine 10% solution	100 ml	07/24/97
3136	Cocaine 10% solution	100 ml	08/21/97

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

- (13) Michael David Perciful did, on or about March 7, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole one 5gm bottle of Cocaine HCl flakes pursuant to DEA 222 Form No. 953440122. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (14) Michael David Perciful did, on or about March 27, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole two 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 953440123. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (15) Michael David Perciful did, on or about April 16, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole one 5gm bottle of Cocaine HCl flakes pursuant to DEA 222 Form No. 953440125. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (16) Michael David Perciful did, on or about May 1, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole two 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 953440126. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (17) Michael David Perciful did, on or about May 16, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied

consent of the owner, to wit: Michael David Perciful stole two 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 953440127. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (18) Michael David Perciful did, on or about May 29, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole two 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 953440157. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (19) Michael David Perciful did, on or about June 12, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole two 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 953440159. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (20) Michael David Perciful did, on or about June 24, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole two 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 953440160. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (21) Michael David Perciful did, on or about July 10, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole two 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 953440161. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (22) Michael David Perciful did, on or about July 23, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole two 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 953440162. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (23) Michael David Perciful did, on or about August 21, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole two 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 953440163. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (24) Michael David Perciful did, on or about September 8, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the

property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole two 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 953440129. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (25) Michael David Perciful did, on or about September 18, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole two 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 953440131. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (26) Michael David Perciful did, on or about October 1, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole one 25gm bottle of Cocaine HCl flakes pursuant to DEA 222 Form No. 953440132. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (27) Michael David Perciful did, on or about October 28, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole five 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 973054619. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (28) Michael David Perciful did, on or about November 19, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole five 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 973054624. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (29) Michael David Perciful did, on or about December 11, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole six 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 973054623. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (30) Michael David Perciful did, on or about December 30, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole six 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 973054640. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (31) Michael David Perciful did, on or about January 20, 1998, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole six 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 973054641. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (32) Michael David Perciful did, on or about February 12, 1998, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole six 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 973054643. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (33) Michael David Perciful did, on or about February 27, 1998, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole six 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 973054645. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (34) Michael David Perciful did, on or about March 13, 1998, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Barney Zell Pharmacy, Inc., beyond the express or implied consent of the owner, to wit: Michael David Perciful stole six 5gm bottles of Cocaine HCl flakes pursuant to DEA 222 Form No. 973054646. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (35) Michael David Perciful did, on or about March 17, 1998, knowing that an official proceeding or investigation was in progress or was likely to be instituted, alter, destroy, conceal, or remove records with purpose to impair their value or availability as evidence in such proceeding or investigation, to wit: Michael David Perciful stole and subsequently destroyed 42 DEA 222 Forms in order to conceal the fact that he was stealing schedule II controlled substances from Barney Zell's Pharmacy, Inc. Such conduct is in violation of Section 2921.12 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, Michael David Perciful knowingly and voluntarily agrees with the State Board of Pharmacy to the revocation of his pharmacist identification card, No. 03-2-16516, effective immediately.

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.

Michael David Perciful 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.

Michael David Perciful 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. Michael David Perciful 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. Michael David Perciful 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.

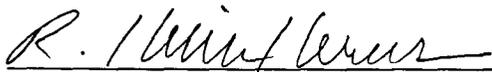
This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the date of the Board President's signature below.



Michael David Perciful, Respondent

December 9, 1998

Date of Signature



R. Kevin Kerns, Attorney for Respondent

December 9, 1998

Date of Signature



Joseph J. Maslak, Jr., President, Ohio State Board of Pharmacy

12/9/98

Date of Signature



Sally Ann Steuk, Ohio Assistant Attorney General

12-9-98

Date of Signature