



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-991007-026)

In The Matter Of:

ROBERT C. SUTTON, R.Ph.

RD 2, Box 311

Kinsman, Ohio 44428

(R.Ph. No. 03-3-05272)

INTRODUCTION

THE MATTER OF ROBERT C. SUTTON CAME TO HEARING ON MAY 2 AND 3, 2000, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

ROBERT C. SUTTON WAS REPRESENTED BY EMMOR F. SNYDER, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

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

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit RS1--Copy of sixteen-page Notice of Opportunity for Hearing letter of Robert C. Sutton dated October 7, 1999.
- (2) Exhibit DS1--Copy of twelve-page Notice of Opportunity for Hearing letter of Donald Robert Sutton dated October 7, 1999.

- (3) Exhibit KP1--Copy of fifteen-page Notice of Opportunity for Hearing letter of Kinsman Pharmacy, Inc. dated October 7, 1999.
- (4) Exhibit 1A--Hearing request letter in the matters of Kinsman Pharmacy, Inc., Robert C. Sutton, and Donald R. Sutton dated October 25, 1999.
- (5) Exhibit 1B--Copy of Hearing Schedule letter in the matter of Robert C. Sutton dated October 28, 1999; copy of Hearing Schedule letter in the matter of Donald Robert Sutton dated October 28, 1999; and copy of Hearing Schedule letter in the matter of Kinsman Pharmacy, Inc. dated October 28, 1999.
- (6) Exhibit 1C--Copy of Hearing Schedule letter in the matters of Kinsman Pharmacy, Inc., Robert C. Sutton, and Donald R. Sutton dated January 14, 2000.
- (7) Exhibit RS1D--Copy of Pharmacist File Front Sheet of Robert Carter Sutton, Jr. showing original date of registration as August 4, 1952; and two-page copy of Renewal Application for Pharmacist License No. 03-3-05272 for a license to practice pharmacy in Ohio from September 15, 1999, to September 15, 2000, of Robert C. Sutton dated July 14, 1999.
- (8) Exhibit DS1D--Copy of Pharmacist File Front Sheet of Donald Robert Sutton showing original date of registration as August 8, 1979; and two-page copy of Renewal Application for Pharmacist License No. 03-3-12930 for a license to practice pharmacy in Ohio from September 15, 1999, to September 15, 2000, of Donald Robert Sutton dated July 14, 1999.
- (9) Exhibit KP1D--Copy of Renewal Application for DDD License No. 02-0104350 for a terminal distributor of dangerous drugs license from January 1, 1999, to December 31, 1999, of Kinsman Pharmacy, Inc. dated October 21, 1998.
- (10) Exhibit 2--Eight-page Inspector Copy of Dangerous Drug Distributor Inspection Report of Kinsman Pharmacy, Inc., Terminal Distributor No. 02-104350, dated May 2, 1994; and six-page copy of response to inspection report violations signed by Donald Sutton, not dated.
- (11) Exhibit 2A--Eleven-page Inspector Copy of Dangerous Drug Distributor Inspection Report of Kinsman Pharmacy, Inc., Terminal Distributor No. 02-104350, dated May 21, 1996; and copy of eleven-page inspection report with handwritten responses to violations, not signed or dated; copy of prescriptions numbered 408064 and 408065; and copy of handwritten notes on Opryland Hotel letterhead regarding Kinsman Pharmacy patients.
- (12) Exhibit 2B--Handwritten Class II Inventory of Kinsman Pharmacy dated May, 1996; and four-page handwritten Controlled Substance Inventory (Class III-V) of Kinsman Pharmacy dated April 23, 1996.
- (13) Exhibit 3--Nine prescriptions numbered as follows: 408867, 408054, 408052, 409831, 410935, 409975 and 409976, 414249, 409834, and 408855.
- (14) Exhibit 4--Seven prescriptions numbered as follows: 430504, 430090, 425366, 427829, 426383, 425369, and 427036.
- (15) Exhibit 5--Inspector Copy of Dangerous Drug Distributor Inspection Report of Kinsman Pharmacy, Inc., Terminal Distributor No. 02-104350, dated February 27, 1996.

- (16) Exhibit 6--Copy of letter from Timothy J. Benedict dated January 22, 1996.
- (17) Exhibit 7--Copy of two-page letter from Donald R. Sutton dated February 28, 1996.
- (18) Exhibit 8--Copy of Kinsman Township Police Department Incident Report, No. 96-141, dated February 28, 1996.
- (19) Exhibit 9--Copy of Kinsman Township Police Department Voluntary Statement of Donald Sutton dated March 5, 1996.
- (20) Exhibit 10--Copy of Kinsman Township Police Department Voluntary Statement of Bonnie Mae Hogan dated March 5, 1996.
- (21) Exhibit 11--Copy of two-page Kinsman Township Police Department Voluntary Statement of Susan Kidd dated February 29, 1996.
- (22) Exhibit 12--Copy of letter from Richard G. Ward, Inspector General, dated May 6, 1996.
- (23) Exhibit 13--Twenty-three-page Transcript of conversations during a tape-recorded investigation at Kinsman Pharmacy of Agent George Pavlich, Agent Lynn Mudra, Agent Frank Bodi, and Agent Supervisor Robert Cole, and Kinsman Pharmacy personnel conducted on February 27, 1996.
- (24) Exhibit 14--Copy of Kinsman Pharmacy Invoice for Investigation Consultation dated March 5, 1996.
- (25) Exhibit 15--Prescription number 431743; empty Revco prescription vial number 0305-305757 dated May 7, 1996; Kinsman Pharmacy Prescription Profile detailed report of Chong Hegedus for the time period of January 1, 1996, to May 21, 1996, dated May 21, 1996; and handwritten notes regarding prescriptions numbered 431743 and 0305-305757.
- (26) Exhibit 16--Seventy-two-page Transcript of conversations during tape-recorded investigation at Kinsman Pharmacy of Agent George Pavlich, Agent David Gallagher, Agent Christopher Reed, Agent Jim Reye, and pharmacy staff conducted on May 21, 1996.
- (27) Exhibit 17--Prescription number 429081.
- (28) Exhibit 18--Prescription number 429082.
- (29) Exhibit 19--Thirteen-page Kinsman Pharmacy Prescription Profile detailed report of Robert Floch for the time period from January 1, 1994, to December 31, 1996, dated June 11, 1997.
- (30) Exhibit 20--Seven-page Kinsman Pharmacy Prescription Profile detailed report of Catherine T. Floch for the time period of January 1, 1993, to May 21, 1996, dated May 29, 1996.
- (31) Exhibit 21--Two sealed bottles labeled Up Your Gas containing 30 tablets each.
- (32) Exhibit 22--Duplicate Main Discount Drug prescription labels numbered 130966 and 130967 dated November 1, 1996, and handwritten notes of George Pavlich, not dated.
- (33) Exhibit 23--Two Kinsman Pharmacy prescription vials: number 435675 containing 80 tablets of Propoxyphene-N 100mg/APAP 650mg dated November 25, 1996, and number 435676 containing 60 tablets of Cyclobenzaprine 10mg dated November 25, 1996, in a white bag displaying patient pay labels from prescriptions numbered 435675 and 435676 dated November 25, 1996.
- (34) Exhibit 24--Prescription number 435675.

- (35) Exhibit 25--Prescription number 435676.
- (36) Exhibit 26--Two Kinsman Pharmacy Prescription Profile reports, one detailed and one abbreviated, of Samuel P. Vacanti for the time period of June 1, 1996, to March 10, 1997, dated March 10, 1997.
- (37) Exhibit 27--Copy of Blue Cross/Blue Shield of Ohio Insurance Card of Samuel P. Vacanti with attached instructions dated November 1, 1992.
- (38) Exhibit 28--Overholt's Pharmacy duplicate labels for prescriptions numbered 389931 and 389932 dated November 14, 1996.
- (39) Exhibit 29--Prescription number 435894 and handwritten note regarding prescription number 435893.
- (40) Exhibit 30--Two Kinsman Pharmacy prescription vials: number 435893 containing 45 tablets of Carisoprodol 350mg dated December 5, 1996, and number 435894 containing 60 tablets of Propoxyphene-N 100mg/APAP 650mg dated December 5, 1996, and a white bag displaying a Kinsman Pharmacy label and patient pay labels for prescriptions numbered 435893 and 435894 dated December 5, 1996.
- (41) Exhibit 31--Two Kinsman Pharmacy Prescription Profile reports, one detailed and one abbreviated, of James R. Martin for the time period of June 1, 1996, to March 10, 1997, dated March 10, 1997.
- (42) Exhibit 32--Copy of Blue Cross/Blue Shield of Ohio Insurance Card of James R. Martin with attached instructions dated November 1, 1992.
- (43) Exhibit 33--Four Kinsman Pharmacy prescription vials: two numbered 435893 containing 90 tablets each of Carisoprodol 350mg dated December 27, 1996, and two numbered 435894 containing 120 tablets each of Propoxyphene-N 100mg/APAP 650mg dated December 27, 1996, and a white bag displaying a Kinsman Pharmacy label and patient pay labels for prescriptions numbered 435893 and 435894 dated December 27, 1996 in evidence bag, Case No. NL-0062, dated December 27, 1996.
- (44) Exhibit 34--Eighteen-page Transcript of conversations during tape-recorded investigation at Kinsman Pharmacy of Agent George Pavlich, Tom Malone, and pharmacy staff conducted on March 10, 1997.
- (45) Exhibit 35--Two Kinsman Pharmacy prescription vials: number 435675 containing 80 tablets of Propoxyphene-N 100mg/APAP 650mg dated January 2, 1997, and number 435676 containing 60 tablets of Cyclobenzaprine 10mg dated January 2, 1997, in a Kinsman Pharmacy white bag displaying patient pay labels from prescriptions numbered 435675 and 435676 dated January 2, 1997.
- (46) Exhibit 36--Four prescriptions numbered as follows: 426170, 426171, 426172, and 428648.
- (47) Exhibit 37--Eleven-page Kinsman Pharmacy Prescription Profile detailed report of Grace Banning for the time period of January 1, 1993, to May 21, 1996, dated May 29, 1996.
- (48) Exhibit 38--Pages 88, 89, and 90 of Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of Robert Waite, D.O. signed and notarized on September 11, 1997.

- (49) Exhibit 39--Three prescriptions numbered 427721, 424559, and 428182.
- (50) Exhibit 40--Thirteen-page Kinsman Pharmacy Prescription Profile detailed report of Katherine Draa for the time period of January 1, 1993, to May 21, 1996, report dated May 21, 1996.
- (51) Exhibit 41--Pages 3 and 4 of Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of Robert Waite, D.O. signed and notarized on September 11, 1997.
- (52) Exhibit 42--Four-page Inspector Copy of Dangerous Drug Distributor Inspection Report of Kinsman Pharmacy, Inc., Terminal Distributor No. 02-104350, dated June 11, 1997.
- (53) Exhibit 43--Eight-page Kinsman Pharmacy Prescription Profile detailed report of Barry Savel for the time period of January 1, 1993, to May 21, 1996, report dated May 21, 1996.
- (54) Exhibit 44--Twenty-one prescriptions numbered as follows: 416356, 417130, 417789, 418415, 419084, 419813, 420428, 421185, 421906, 422596, 423330, 424018, 424632, 425179, 425761, 426278, 426848, 427613, 428129, 429233, and 430267.
- (55) Exhibit 45--Five-page Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, by Agent George Pavlich dated July 6, 1999.
- (56) Exhibit 46--Eight-page Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of R. Denison Stewart, M.D. signed and notarized on September 23, 1997.
- (57) Exhibit 47--Three prescriptions numbered as follows: 422627, 427511, and 430360.
- (58) Exhibit 48--Pages 108, 109, and 110 of Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of Mary E. Magyar, Office Manager for Gary W. Stucke, D.O. signed and notarized on September 11, 1997.
- (59) Exhibit 49--Two prescriptions numbered as follows: 417124 and 427086.
- (60) Exhibit 50--Pages 111 and 112 of Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of Bridget Donnelly, Office Manager for E. Lee Foster, D.O. signed and notarized on September 11, 1997.
- (61) Exhibit 51--Two prescriptions numbered as follows: 424156 and 430728.
- (62) Exhibit 52--Pages 113 and 114 of Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of Mary E. Magyar, Office Manager of Dr. Gary W. Stucke signed and notarized on September 11, 1997.
- (63) Exhibit 53--Nine prescriptions numbered as follows: 411310, 412337, 413829, 416030, 420557, 421862, 422625, 426186, and 428575.
- (64) Exhibit 54--Nineteen-page Kinsman Pharmacy Prescription Profile detailed report of Margaret Goist for the time period of January 1, 1993, to May 21, 1996, dated May 21, 1996.
- (65) Exhibit 55--Four-page Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of Bridget Donnelly, Office Manager for D. Lee Foster, D.O. signed and notarized on September 11, 1997.

- (66) Exhibit 56--Four prescriptions numbered as follows: 421578, 426710, 426139, and 426809.
- (67) Exhibit 57--Ten-page Kinsman Pharmacy Prescription Profile detailed report of Betty Logan for the time period of January 1, 1993, to May 21, 1996, dated May 28, 1996.
- (68) Exhibit 58--Three-page Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of Robert M. Waite, D.O. signed and notarized on September 11, 1997.

Respondent's Exhibits:

- (1) Exhibit A--Copy of letter from Dale E. Goist dated March 17, 2000.
- (2) Exhibit B--Copy of two-page letter from Barry Savel dated March 25, 2000.
- (3) Exhibit C--Copy of two-page record of prescriptions for Margaret Goist from E. Lee Foster, D.O. dated January 17, 2000.
- (4) Exhibit D--Copy of letter from Robert Floch and Catherine Floch dated February 15, 2000.
- (5) Exhibit E--Copy of letter from Jeffrey A. Bedlion, M.D. dated January 18, 2000.
- (6) Exhibit F--Copy of letter from Rev. Dr. John F. Helgeson dated January 14, 2000.
- (7) Exhibit G--Copy of letter from Timothy D. Compan, not dated.
- (8) Exhibit H--Copy of letter from Robert M. Waite, D.O. dated January 9, 2000.
- (9) Exhibit I--Copy of letter from Brad Smith, Pastor dated February 15, 2000.
- (10) Exhibit J--Copy of letter from Margery Hine dated February 17, 2000.
- (11) Exhibit K--Copy of letter from Police Chief Leroy Long dated February 28, 2000.
- (12) Exhibit L--Copy of diagram of Kinsman Pharmacy prescription room and location of seven people within that room.
- (13) Exhibit M--Copy of two-page Response to the Ohio State Board of Pharmacy from Donald R. Sutton, not dated.
- (14) Exhibit N--Copy of three-page Response to the Ohio State Board of Pharmacy from Robert C. Sutton, not dated.

FINDINGS OF FACT

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

- (1) Records of the State Board of Pharmacy indicate that Robert C. Sutton was originally licensed in the state of Ohio on August 4, 1952, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further indicate that Robert C. Sutton is the Responsible Pharmacist at Kinsman Pharmacy, Inc. pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.

- (2) Robert C. Sutton did, as the Responsible Pharmacist, on or before May 2, 1994, fail to provide personal supervision of the dangerous drugs, to wit: Susan Kidd possessed a key to the non-barricaded pharmacy. Such conduct is in violation of Rule 4729-9-11 of the Ohio Administrative Code and not in accordance with Sections 4729.27 and 4729.55 of the Ohio Revised Code.
- (3) Robert C. Sutton did, as the Responsible Pharmacist, on or before May 2, 1994, fail to properly execute controlled substance order forms, i.e. D.E.A. 222 forms, to wit: when drugs were received by Kinsman Pharmacy, Inc. pursuant to D.E.A. 222 forms, the forms were not completed as to the amount of controlled substances received nor the date received. Such conduct is in violation of Rule 4729-9-14 of the Ohio Administrative Code, Section 3719.07 of the Ohio Revised Code, and Section 1305.06 of the Code of Federal Regulations.
- (4) Robert C. Sutton did, as the Responsible Pharmacist, on or before May 2, 1994, fail to keep a complete and accurate record of all controlled substances, to wit: Kinsman Pharmacy, Inc. inventories for Schedules III, IV, and V controlled substances had no accountability, opening and closing inventories did not indicate the date and/or the name of the person conducting the inventory. Such conduct is not in accordance with Rules 4729-5-11 and 4729-9-14 of the Ohio Administrative Code, Sections 1304.11 through 1304.13 of the Code of Federal Regulations, and Section 3719.07 of the Ohio Revised Code.
- (5) Robert C. Sutton did, as the Responsible Pharmacist, on or before May 21, 1996, fail to keep a complete and accurate record of all controlled substances, to wit: after being warned by Board agents on May 2, 1994, Kinsman Pharmacy, Inc. failed to properly prepare biennial inventories for Schedule II controlled substances dated May 1996; and, the inventories for Schedules III, IV, and V controlled substances dated April 23, 1996, were incomplete and not in accordance with Rules 4729-5-11 and 4729-9-14 of the Ohio Administrative Code, Sections 1304.11 through 1304.13 of the Code of Federal Regulations, and Section 3719.07 of the Ohio Revised Code.
- (6) Robert C. Sutton did, as the Responsible Pharmacist, on or before May 2, 1994, fail to record required information when dispensing prescriptions, to wit: Robert C. Sutton and/or a pharmacist under his supervision failed to record prescription information such as date, dispensing pharmacist, drug dispensed and quantity, the brand or generic manufacturer of the drug dispensed, or the manual initials of the dispensing pharmacist. Such conduct is in violation of Rules 4729-5-17 and 4729-5-30 of the Ohio Administrative Code (as was in effect during said time period), and Sections 3719.05 and 4729.38 of the Ohio Revised Code.
- (7) Robert C. Sutton did, as the Responsible Pharmacist, prior to May 2, 1994, fail to keep accurate records of all exempt drugs

including hypodermics dispensed, to wit: Robert C. Sutton and/or a pharmacist under his supervision failed to keep a record of each transaction, including the date, the type and quantity of articles furnished, and the name, address, and signature of the person to whom the articles were furnished. Such conduct is in violation of Sections 3719.15, 3719.16, and 3719.172 of the Ohio Revised Code.

- (8) Robert C. Sutton did, as the Responsible Pharmacist, after being warned by Board agents on May 2, 1994, fail to record required information when dispensing prescriptions, to wit: Robert C. Sutton and/or a pharmacist under his supervision failed to record, either manually or in the computer system, the brand or generic manufacturer and pharmacists were not manually initialing the original prescriptions. Such conduct is in violation of Rules 4729-5-17 and 4729-5-30 of the Ohio Administrative Code (as was in effect during said time period), and Sections 3719.05 and 4729.38 of the Ohio Code.
- (9) Robert C. Sutton did, as the Responsible Pharmacist, on or about February 27, 1996, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within his official capacity, hamper or impede a public official in the performance of his lawful duties, to wit: Robert C. Sutton and/or a pharmacist under his supervision failed to provide previously requested documents during an inspection, and due to confrontation, employees of the State Board of Pharmacy were unable to complete the inspection. Such conduct is in violation of Rule 4729-5-17 of the Ohio Administrative Code (as was in effect during said time period), and Sections 2921.31 and 3719.27 of the Ohio Revised Code.
- (10) Robert C. Sutton did, as the Responsible Pharmacist, on or about May 9, 1996, utter a false or forged prescription for dangerous drugs, to wit: Robert C. Sutton and/or a pharmacist under his supervision filled prescription number 431743 for four unit doses of Flagyl 500mg which was originally dispensed at Revco #305 when there had been no transfer. Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code (as was in effect during said time period).
- (11) Robert C. Sutton did, as the Responsible Pharmacist, on or before May 21, 1996, allow a registered pharmacist to practice pharmacy without a photograph attached to his current identification card, to wit: after being warned on May 2, 1994, for not carrying his identification card on his person, Robert C. Sutton was found practicing pharmacy without a photo attached to his identification card. Such conduct is in violation of Rule 4729-5-02 of the Ohio Administrative Code (as was in effect during said time period).
- (12) Robert C. Sutton did, as the Responsible Pharmacist, on or before May 21, 1996, fail to keep complete and accurate records in the automated data system, to wit: prescriptions numbered 429082

and 429081, written for Patient #3, were located in the profile for Patient #4 and the original prescriptions for Patient #3 were affixed with computer labels for Patient #4. Such conduct is in violation of Rule 4729-5-17 of the Ohio Administrative Code (as was in effect during said time period).

- (13) Robert C. Sutton did, as the Responsible Pharmacist, on or about May 21, 1996, fail to maintain personal supervision over the dangerous drug stock to prevent theft or diversion, to wit: Kinsman Pharmacy, Inc. possessed stock bottles of Up Your Gas, containing Ephedrine (Ma Huang), outside the confines of the pharmacy. Such conduct is in violation of Rule 4729-9-11 of the Ohio Administrative Code (as was in effect during said time period).
- (14) Robert C. Sutton did, as the Responsible Pharmacist, on or about November 25, 1996, fail to file a copy of the original prescriptions in accordance with the rules and regulations adopted by the Ohio State Board of Pharmacy, to wit: Robert C. Sutton and/or a pharmacist under his supervision filled prescriptions numbered 435675 and 435676, using the information on empty vials which originated from Main Discount Drug, when there had been no legitimate transfer. Such conduct is in violation of Rule 4729-5-24 of the Ohio Administrative Code and Section 4729.37 of the Ohio Revised Code.
- (15) Robert C. Sutton did, as the Responsible Pharmacist, on or about November 25, 1996, fail to record required information when dispensing prescriptions, to wit: Robert C. Sutton and/or a pharmacist under his supervision failed to record prescription information pursuant to transferred prescriptions numbered 435675 and 435676 such as full name and address of patient, date of issuance, date of dispensing, pharmacist from which the prescription was transferred, and original number of refills. Such conduct is in violation of Rules 4729-5-17, 4729-5-24, and 4729-5-30 of the Ohio Administrative Code.
- (16) Robert C. Sutton did, as the Responsible Pharmacist, on or about November 25, 1996, fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing medication pursuant to prescriptions numbered 435675 and 435676, Robert C. Sutton and/or a pharmacist under his supervision failed to review the original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Robert C. Sutton and/or a pharmacist under his supervision failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.
- (17) Robert C. Sutton did, as the Responsible Pharmacist, on or about November 25, 1996, with purpose to deprive, knowingly obtain or exert control over the property of another by deception, to wit: Robert C. Sutton and/or a pharmacist under his supervision over-charged the patient \$4.00, pursuant to prescriptions numbered 435675 and 435676, charging brand-name co-pays when

dispensing generic medications. Such conduct is in violation of Sections 2913.02 and 4729.38 of the Ohio Revised Code.

- (18) Robert C. Sutton did, as the Responsible Pharmacist, on or about December 5, 1996, intentionally make and/or knowingly possess a false or forged prescription, to wit: Robert C. Sutton and/or a pharmacist under his supervision dispensed medications pursuant to prescriptions numbered 435893 and 435894 by allowing an extra refill upon transfer from Overholt Pharmacy. Such conduct is in violation of Rule 4729-5-24 of the Ohio Administrative Code and Section 2925.23 of the Ohio Revised Code.
- (19) Robert C. Sutton did, as the Responsible Pharmacist, on or about December 5, 1996, fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing medication pursuant to prescriptions numbered 435893 and 435894, Robert C. Sutton and/or a pharmacist under his supervision failed to review the original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Robert C. Sutton and/or a pharmacist under his supervision failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.
- (20) Robert C. Sutton did, as the Responsible Pharmacist, on or about December 27, 1996, fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing medication pursuant to prescriptions numbered 435893 and 435894, Robert C. Sutton and/or a pharmacist under his supervision failed to review the original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Robert C. Sutton and/or a pharmacist under his supervision failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.
- (21) Robert C. Sutton did, on or about December 27, 1996, fail to record his name and/or initials on the alternate recordkeeping system, to wit: when dispensing medication pursuant to prescriptions numbered 435893 and 435894, Robert C. Sutton used the computer initials of Donald R. Sutton. Such conduct is in violation of Rule 4729-5-17 of the Ohio Administrative Code.
- (22) Robert C. Sutton did, as the Responsible Pharmacist, on or about March 10, 1997, fail to preserve prescriptions on file, subject to inspection by the proper officers of the law, to wit: Robert C. Sutton and/or a pharmacist under his supervision was unable to locate prescription number 435893 dated December 5, 1996. Such conduct is in violation of Rules 4729-5-09, 4729-5-17, and 4729-5-22 of the Ohio Administrative Code and Section 4729.37 of the Ohio Revised Code.
- (23) Robert C. Sutton did, as the Responsible Pharmacist, on or about January 2, 1997, fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing medication

pursuant to prescriptions numbered 435675 and 435676, Robert C. Sutton and/or a pharmacist under his supervision failed to review the original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Robert C. Sutton and/or a pharmacist under his supervision failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.

- (24) Robert C. Sutton did, as the Responsible Pharmacist, on or about January 2, 1997, with purpose to deprive, knowingly obtain or exert control over the property of another by deception, to wit: Robert C. Sutton and/or a pharmacist under his supervision over-charged the patient \$4.00, pursuant to prescriptions numbered 435675 and 435676, by charging brand-name co-pays when dispensing generic medications. Such conduct is in violation of Sections 2913.02 and 4729.38 of the Ohio Revised Code.
- (25) Robert C. Sutton did, as the Responsible Pharmacist, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: Robert C. Sutton and/or a pharmacist under his supervision created the following prescription refills for Patient #1, purporting to be legitimate, when there had been no valid order from an authorized prescriber:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/24/95	426170	Tegretol 200mg	30	DRS
12/26/95	426170	Tegretol 200mg	30	DRS
01/27/96	426170	Tegretol 200mg	30	DRS
02/26/96	426170	Tegretol 200mg	30	DRS
03/23/96	426170	Tegretol 200mg	30	DRS
11/24/95	426171	Calan SR 240mg	30	DRS
12/26/95	426171	Calan SR 240mg	30	DRS
01/27/96	426171	Calan SR 240mg	30	DRS
02/26/96	426171	Calan SR 240mg	30	DRS
03/23/96	426171	Calan SR 240mg	30	DRS
12/26/95	426172	Prinivil 10mg	30	DRS
01/27/96	426172	Prinivil 10mg	30	DRS
02/26/96	426172	Prinivil 10mg	30	DRS
03/23/96	426172	Prinivil 10mg	30	DRS

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code (as was in effect during said time period).

- (26) Robert C. Sutton did, as the Responsible Pharmacist, on or about the following dates, sell at retail dangerous drugs, to wit: Robert C. Sutton and/or a pharmacist under his supervision sold the following dangerous drugs to Patient #1 pursuant to unauthorized refills:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/24/95	426170	Tegretol 200mg	30	DRS
12/26/95	426170	Tegretol 200mg	30	DRS
01/27/96	426170	Tegretol 200mg	30	DRS
02/26/96	426170	Tegretol 200mg	30	DRS
03/23/96	426170	Tegretol 200mg	30	DRS
11/24/95	426171	Calan SR 240mg	30	DRS
12/26/95	426171	Calan SR 240mg	30	DRS
01/27/96	426171	Calan SR 240mg	30	DRS
02/26/96	426171	Calan SR 240mg	30	DRS
03/23/96	426171	Calan SR 240mg	30	DRS
12/26/95	426172	Prinivil 10mg	30	DRS
01/27/96	426172	Prinivil 10mg	30	DRS
02/26/96	426172	Prinivil 10mg	30	DRS
03/23/96	426172	Prinivil 10mg	30	DRS

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

- (27) Robert C. Sutton did, as the Responsible Pharmacist, on or about February 26, 1996, and March 23, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each occasion, Robert C. Sutton and/or a pharmacist under his supervision created prescription refills for Patient #1 pursuant to prescription number 428648, written for 30 unit doses of Tylenol w/Codeine #3, when there had been no valid order from an authorized prescriber. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (28) Robert C. Sutton did, as the Responsible Pharmacist, on or about February 26, 1996, and March 23, 1996, 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., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion, Robert C. Sutton and/or a pharmacist under his supervision sold 30 unit doses of Tylenol w/Codeine #3 pursuant to prescription number 428648 to Patient #1 without a legitimate purpose. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code (as was in effect during said time period).
- (29) Robert C. Sutton did, as the Responsible Pharmacist, on or about September 1, 1995, intentionally make and/or knowingly possess a false or forged prescription, to wit: Robert C. Sutton and/or a pharmacist under his supervision created a refill for Patient #7, pursuant to prescription number 424559 written for 30 unit doses of propoxyphene napsylate 100mg/APAP 650mg, when there had

been no such order from an authorized prescriber. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

- (30) Robert C. Sutton did, as the Responsible Pharmacist, on or about September 1, 1995, 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, to wit: Robert C. Sutton and/or a pharmacist under his supervision sold 30 unit doses of propoxyphene napsylate 100mg/APAP 650mg to Patient #7 pursuant to prescription number 424559 without a legitimate purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code (as was in effect during said time period).
- (31) Robert C. Sutton did, as the Responsible Pharmacist, on or before June 11, 1997, fail to preserve prescriptions on file, subject to inspection by the proper officers of the law, to wit: Robert C. Sutton and/or a pharmacist under his supervision was unable to locate prescriptions numbered 410686, 411023, 411162, 411995, 412814, 413731, 414686, 415414, 431182, and 431964. Such conduct is in violation of Rules 4729-5-09, 4729-5-17, and 4729-9-22 of the Ohio Administrative Code and Section 4729.37 of the Ohio Revised Code.
- (32) Robert C. Sutton did, as the Responsible Pharmacist, from June 10, 1993, through May 18, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: throughout this 774-day time period, Robert C. Sutton and/or a pharmacist under his supervision dispensed on 158 occasions, 9,510 unit doses of Hydrocodone 5mg/APAP 500mg to Patient #2, when 4,644 unit doses was the maximum amount authorized by a physician. Of those dispensings, 53% were made by Donald R. Sutton, R.Ph. Robert C. Sutton and/or a pharmacist under his supervision created refills and/or refilled prescriptions too quickly, over-dispensing 4,866 unit doses. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (33) Robert C. Sutton did, as the Responsible Pharmacist, on or about June 10, 1993, through May 18, 1996, sell a controlled substance in an amount exceeding one hundred times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Robert C. Sutton and/or a pharmacist under his supervision sold 4,866 unit doses of Hydrocodone 5mg/APAP 500mg to Patient #2 without authorization by the prescribing physician and without a legitimate purpose, 53% of those dispensings were made by Donald R. Sutton, R.Ph. Such conduct is in violation of Section 2925.03(A)(10) of the Ohio Revised Code (as was in effect during said time period).
- (34) Robert C. Sutton did, as the Responsible Pharmacist, from July 5, 1995, through May 10, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each listed

occasion Robert C. Sutton and/or a pharmacist under his supervision dispensed 100 unit doses of Darvocet N-100 to Patient #3 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
07/05/95	422627	DRS
12/05/95	427511	DRS
01/22/96	429082	DRS
03/02/96	429082	DRS
04/12/96	430359	RCS
05/10/96	430359	DRS

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

- (35) Robert C. Sutton did, as the Responsible Pharmacist, from July 5, 1995, through May 10, 1996, sell 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., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Robert C. Sutton and/or a pharmacist under his supervision sold 100 unit doses of Darvocet N-100 to Patient #3 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
07/05/95	422627	DRS
12/05/95	427511	DRS
01/22/96	429082	DRS
03/02/96	429082	DRS
04/12/96	430359	RCS
05/10/96	430359	DRS

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code (as was in effect during said time period).

- (36) Robert C. Sutton did, as the Responsible Pharmacist, from July 15, 1994, through June 28, 1995, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each occasion Robert C. Sutton and/or a pharmacist under his supervision dispensed 50 unit doses of Darvocet N-100 to Patient #4 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
07/15/94	417124	RMZ
11/02/95	427086	DRS
02/20/95	427086	DRS
05/25/95	424156	DRS
06/28/95	424156	DRS

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

- (37) Robert C. Sutton did, as the Responsible Pharmacist, from July 15, 1994, through June 28, 1995, 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, to wit: on each occasion Robert C. Sutton and/or a pharmacist under his supervision sold 50 unit doses of Darvocet N-100 to Patient #4 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
07/15/94	417124	RMZ
11/02/95	427086	DRS
02/20/95	427086	DRS
05/25/95	424156	DRS
06/28/95	424156	DRS

Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code (as was in effect during said time period).

- (38) Robert C. Sutton did, as the Responsible Pharmacist, from August 10, 1993, through February 27, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each occasion Robert C. Sutton and/or a pharmacist under his supervision dispensed Talacen to Patient #5 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>Quantity</u>	<u>R.Ph.</u>
08/10/93	411310	25	RCS
08/18/93	411310	25	DRS
01/04/94	413829	25	RCS
02/02/94	413829	25	PJM
04/12/94	416030	25	DRS
04/18/94	416030	25	DRS
11/14/94	420557	30	DRS
11/22/94	420557	30	DRS
12/05/94	420557	30	DRS
12/16/94	420557	30	DRS
12/26/94	420557	30	DRS
01/06/95	420557	30	RMZ
01/16/95	421862	30	DRS
01/24/95	421862	30	DRS
02/01/95	421862	30	RCS
02/09/95	421862	30	RCS
03/16/95	422625	20	DRS
03/25/95	422625	30	RCS
04/07/95	422625	30	WMC
09/14/95	426186	20	RCS
09/23/95	426186	30	RCS
10/02/95	426186	30	DRS
01/27/96	428575	25	DRS

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

- (39) Robert C. Sutton did, as the Responsible Pharmacist, from August 10, 1993, through February 7, 1996, sell a controlled substance in an amount 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., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Robert C. Sutton and/or a pharmacist under his supervision sold Talacen to Patient #5 without a valid prescription and/or without a legitimate purpose:

<u>Date</u>	<u>Rx No.</u>	<u>Quantity</u>	<u>R.Ph.</u>
08/10/93	411310	25	RCS
08/18/93	411310	25	DRS
01/04/94	413829	25	RCS
02/02/94	413829	25	PJM
04/12/94	416030	25	DRS
04/18/94	416030	25	DRS
11/14/94	420557	30	DRS
11/22/94	420557	30	DRS
12/05/94	420557	30	DRS
12/16/94	420557	30	DRS
12/26/94	420557	30	DRS
01/06/95	420557	30	RMZ
01/16/95	421862	30	DRS
01/24/95	421862	30	DRS
02/01/95	421862	30	RCS
02/09/95	421862	30	RCS
03/16/95	422625	20	DRS
03/25/95	422625	30	RCS
04/07/95	422625	30	WMC
09/14/95	426186	20	RCS
09/23/95	426186	30	RCS
10/02/95	426186	30	DRS
01/27/96	428575	25	DRS
02/07/96	428575	25	DRS

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code (as was in effect during said time period).

- (40) Robert C. Sutton did, as the Responsible Pharmacist, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: Robert C. Sutton and/or a pharmacist under his supervision created the following prescription refills for Patient #5, purporting to be legitimate, when there had been no valid order from an authorized prescriber:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/10/93	412337	Terazol 7 0.4%	1 tube	DRS

		cream		
02/28/94	412337	Terazol 7 0.4%	1 tube	DRS
		cream		
06/06/94	412337	Terazol 7 0.4%	1 tube	DRS
		cream		

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code (as was in effect during said time periods).

- (41) Robert C. Sutton did, as the Responsible Pharmacist, on or about the following dates, sell at retail dangerous drugs, to wit: Robert C. Sutton and/or a pharmacist under his supervision sold the following drugs to Patient #5 pursuant to unauthorized refills:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/10/93	412337	Terazol 7 0.4%	1 tube	DRS
		cream		
02/28/94	412337	Terazol 7 0.4%	1 tube	DRS
		cream		
06/06/94	412337	Terazol 7 0.4%	1 tube	DRS
		cream		

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

- (42) Robert C. Sutton did, as the Responsible Pharmacist, from March 27, 1995, through November 24, 1995, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each listed occasion Robert C. Sutton and/or a pharmacist under his supervision dispensed 30 unit doses of Darvocet N-100 to Patient #6 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
03/27/95	421578	DRS
06/08/95	421578	WMC
11/24/95	426710	DRS

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

- (43) Robert C. Sutton did, as the Responsible Pharmacist, from March 27, 1995, through November 24, 1995, 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, to wit: on each occasion Robert C. Sutton and/or a pharmacist under his supervision sold 30 unit doses of Darvocet N-100 to Patient #6 without a legitimate purpose:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
03/27/95	421578	DRS
06/08/95	421578	WMC
11/24/95	426710	DRS

Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code (as was in effect during said time period).

- (44) Robert C. Sutton did, as the Responsible Pharmacist, on or about February 28, 1994, and again on or about June 6, 1996, make or utter false or forged prescriptions for dangerous drugs, to wit: Robert C. Sutton and/or a pharmacist under his supervision created the following prescription refills for Patient #6 purporting to be legitimate when there had been no valid order from an authorized prescriber:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/07/95	426139	Vasotec	30	DRS
12/04/95	426139	Vasotec	30	DRS
05/15/96	426139	Vasotec	30	DRS
12/04/95	426809	Ticlid 250mg	60	DRS
01/10/96	426809	Ticlid 250mg	60	DRS
02/16/96	426809	Ticlid 250mg	60	RCS
04/01/96	426809	Ticlid 250mg	60	DRS
05/15/96	426809	Ticlid 250mg	60	DRS

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code (as was in during said time period).

- (45) Robert C. Sutton did, as the Responsible Pharmacist, on or about the following dates, sell at retail dangerous drugs, to wit: Robert C. Sutton and/or a pharmacist under his supervision sold the following dangerous drugs to Patient #6 without a legitimate purpose:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/07/95	426139	Vasotec	30	DRS
12/04/95	426139	Vasotec	30	DRS
05/15/96	426139	Vasotec	30	DRS
12/04/95	426809	Ticlid 250mg	60	DRS
01/10/96	426809	Ticlid 250mg	60	DRS
02/16/96	426809	Ticlid 250mg	60	RCS
04/01/96	426809	Ticlid 250mg	60	DRS
05/15/96	426809	Ticlid 250mg	60	DRS

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

- (46) Robert C. Sutton did, as the Responsible Pharmacist, on or about March 10, 1997, knowing he had no privilege to do so, falsify and/or alter data and records; and without privilege to do so, obstruct or delay the performance by a public official, to wit: Donald Sutton, a pharmacist employed by Kinsman Pharmacy under Robert C. Sutton's direct supervision, entered a false address into the patient profile information for James R. Martin during an inspection being conducted by Compliance Agent

George Pavlich. Such conduct is in violation of Sections 2913.42 and 2921.31 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 (46) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (10), (14), (17), (18), (22), (24), and (25) through (45) 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., 3719., or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

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

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-3-05272, held by Robert C. Sutton effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-3-05272, held by Robert C. Sutton effective as of the date of the mailing of this Order.

Division (B) of Section 4729.16 of the Ohio Revised Code requires that any individual whose identification card is revoked shall return the identification card and license to the offices of the State Board of Pharmacy within ten days after receipt of notice of such action. The wall certificate and identification card should be forwarded by certified mail, return receipt requested.

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

MOTION CARRIED.

SO ORDERED.



OHIO STATE BOARD OF PHARMACY

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

-Equal Opportunity Employer and Service Provider-

TEL: 614/466-4143

E-MAIL: exec@bop.state.oh.us

FAX: 614/752-4836

TTY/TDD: Use the Ohio Relay Service: 1-800/750-0750

URL: <http://www.pharmacy.ohio.gov>

NOTICE OF OPPORTUNITY FOR HEARING

October 7, 1999

Robert C. Sutton, R.Ph.
RD 2, Box 311
Kinsman, Ohio 44428

Re: Ohio Registered Pharmacist
License No. 03-3-05272

Dear Mr. Sutton:

YOU ARE HEREBY NOTIFIED that, in accordance with the provisions of Chapters 119. and 4729. of the Ohio Revised Code, you are entitled to a hearing before the State Board of Pharmacy, if you request such a hearing within thirty (30) days of the time of the mailing of this notice, on the basis of the following allegations:

- (1) Records of the Board of Pharmacy indicate that you were originally licensed in the state of Ohio on August 4, 1952, pursuant to examination, and are currently licensed to practice pharmacy in the state of Ohio. Records further indicate that you are the Responsible Pharmacist at Kinsman Pharmacy, Inc. pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Section 4729-5-11 of the Ohio Administrative Code.
- (2) You did, as the Responsible Pharmacist, on or before May 2, 1994, fail to provide personal supervision of the dangerous drugs, to wit: Susan Kidd possessed a key to the non-barricaded pharmacy. Such conduct is in violation of Rule 4729-9-11 of the Ohio Administrative Code and not in accordance with Sections 4729.55 and 4729.27 of the Ohio Revised Code and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (3) You did, as the Responsible Pharmacist, on or before May 2, 1994, fail to properly execute controlled substance order forms, i.e. D.E.A. 222 forms, to wit: when drugs were received by the pharmacy pursuant to D.E.A. 222 forms, the forms were not completed as to the amount of controlled substances received nor the date received. Such conduct is in violation of Rule 4729-9-14 of the Ohio Administrative Code, Section 3719.07 of the Ohio Revised Code and Section 1305.06 of the Code of Federal Regulations and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy and/or guilty of willfully violating, conspiring to violate, attempting to

violate, or aiding and abetting the violation of any of the provisions of Chapter 3719. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (4) You did, as the Responsible Pharmacist, on or before May 2, 1994, fail to keep a complete and accurate record of all controlled substances, to wit: the pharmacy inventories for Schedules III, IV, and V, controlled substances had no accountability, opening and closing inventories did not indicate the date and/or the name of the person conducting the inventory. Such conduct is not in accordance with Rules 4729-5-11 and 4729-9-14 of the Ohio Administrative Code, Section 1304.11 through 1304.13 of the Code of Federal Regulations, and Section 3719.07 of the Ohio Revised Code and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 3719. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (5) You did, as the Responsible Pharmacist, on or before May 21, 1996, fail to keep a complete and accurate record of all controlled substances, to wit: after being warned by board agents on May 2, 1994, the pharmacy failed to properly prepare biennial inventories for Schedule II controlled substances dated May 1996; and, the inventories for Schedules III, IV, and V, controlled substances dated April 23, 1996, were incomplete and not in accordance with Rules 4729-5-11 and 4729-9-14 of the Ohio Administrative Code, Section 1304.11 through 1304.13 of the Code of Federal Regulations, and Section 3719.07 of the Ohio Revised Code and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 3719. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (6) You did, as the Responsible Pharmacist, on or before May 2, 1994, fail to record required information when dispensing prescriptions, to wit: you and/or a pharmacist under your supervision failed to record prescription information such as date, dispensing pharmacist, drug dispensed and quantity, the brand or generic manufacturer of the drug dispensed, or the manual initials of the dispensing pharmacist. Such conduct is in violation of Rules 4729-5-17 and 4729-5-30 of the Ohio Administrative Code (as was in effect during said time period), and Sections 3719.05 and 4729.38 of the Ohio Revised Code and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 3719. or 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (7) You did, as the Responsible Pharmacist, prior to May 2, 1994, fail to keep accurate records of all exempt drugs including hypodermics dispensed, to wit: you and/or a pharmacist under your supervision failed to keep a record of each transaction, including the date, the type and quantity of articles furnished, and the name, address, and signature of the person to whom the articles were furnished. Such conduct is in violation of Sections 3719.15, 3719.16, and 3719.172 of the Ohio Revised Code and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 3719. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (8) You did, as the Responsible Pharmacist, after being warned by Board agents on May 2, 1994, fail to record required information when dispensing prescriptions, to wit: you and/or a pharmacist under your supervision failed to record, either manually or in the computer system, the brand or generic manufacturer; pharmacists were not manually initialing the original prescriptions. Such conduct is in violation of Rules 4729-5-17 and 4729-5-30 of the Ohio Administrative Code (as was in effect during said time period), and Section 3719.05 and 4729.38 of the Ohio Revised Code. Such conduct, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 3719. or 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (9) You did, as the Responsible Pharmacist, on or about February 27, 1996, without privilege to do so and with purpose to prevent, obstruct or delay the performance by a public official of any authorized act within his official capacity, hamper or impede a public official in the performance of his lawful duties, to wit: you and/or a pharmacist under your supervision failed to provide previously requested documents during an inspection, and due to confrontation, employees of the State Board of Pharmacy were unable to complete the inspection. Such conduct is in violation of Rule 4729-5-17 of the Ohio Administrative Code (as was in effect during said time period), and Sections 2921.31 and 3719.27 of the Ohio Revised Code and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 3719. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (10) You did, as the Responsible Pharmacist, on or about May 9, 1996, utter a false or forged prescription for dangerous drugs, to wit: you and/or a pharmacist under your supervision filled prescription number 431743 for 4 unit doses of Flagyl 500mg which was originally dispensed at Revco #305 when there had been no transfer. Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code (as was in effect during said time period) and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions Chapter 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (11) You did, as the Responsible Pharmacist, on or before May 21, 1996, allow a registered pharmacist to practice pharmacy without a photograph attached to his current identification card, to wit: after being warned on May 2, 1994, for not carrying your identification card on your person, you were found practicing pharmacy without a photo attached to your identification card. Such conduct is in violation of Rule 4729-5-02 of the Ohio Administrative Code (as was in effect during said time period) and, if proven, constitutes being guilty dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.
- (12) You did, as the Responsible Pharmacist, on or before May 21, 1996, fail to keep complete and accurate records in the automated data system, to wit: prescriptions numbered 429082 and 429081, written for Patient #3, were located in the profile for Patient #4 and the original prescriptions for Patient #3 were affixed with computer labels for Patient #4. Such conduct is in violation of Rule 4729-5-17 of the Ohio Administrative Code (as was in effect during said time period) and, if proven, constitutes being guilty of

dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

- (13) You did, as the Responsible Pharmacist, on or about May 21, 1996, fail to maintain personal supervision over the dangerous drug stock to prevent theft or diversion, to wit: the pharmacy possessed stock bottles of Up Your Gas, containing Ephedrine (Ma Huang), outside the confines of the pharmacy. Such conduct is in violation of Rule 4729-9-11 of the Ohio Administrative Code (as was in effect during said time period) and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.
- (14) You did, as the Responsible Pharmacist, on or about November 25, 1996, fail to file a copy of the original prescriptions in accordance with the rules and regulations adopted by the state board of pharmacy, to wit: you and/or a pharmacist under your supervision filled prescriptions numbered 435675 and 435676, using the information on empty vials which originated from Main Discount Drug, when there had been no legitimate transfer. Such conduct is in violation of Rule 4729-5-24 of the Ohio Administrative Code and Section 4729.37 of the Ohio Revised Code and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (15) You did, as the Responsible Pharmacist, on or about November 25, 1996, fail to record required information when dispensing prescriptions, to wit: you and/or a pharmacist under your supervision failed to record prescription information pursuant to transferred prescriptions numbered 435675 and 435676 such as full name and address of patient, date of issuance, date of dispensing, pharmacist from which the prescription was transferred, original number of refills. Such conduct is in violation of Rules 4729-5-17, 4729-5-24, and 4729-5-30 of the Ohio Administrative Code and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.
- (16) You did, as the Responsible Pharmacist, on or about November 25, 1996, fail to perform prospective drug utilization review and patient counseling, to wit: you and/or a pharmacist under your supervision, when dispensing medication pursuant to prescriptions numbered 435675 and 435676, failed to review the original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and the pharmacy failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.
- (17) You did, as the Responsible Pharmacist, on or about November 25, 1996, with purpose to deprive, knowingly obtain or exert control over the property of another by deception, to wit: you and/or a pharmacist under your supervision over-charged the patient \$4.00, pursuant to prescriptions numbered 435675 and 435676, charging brand-name co-pays when dispensing generic medications. Such conduct is in violation of Sections 2913.02 and 4729.38 of the Ohio Revised Code, and if proven constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

- (18) You did, as the Responsible Pharmacist, on or about December 5, 1996, intentionally make and/or knowingly possess a false or forged prescription, to wit: you and/or a pharmacist under your supervision dispensed medications pursuant to prescriptions numbered 435893 and 435894 by allowing an extra refill upon transfer from Overholt Pharmacy. Such conduct is in violation of Rule 4729-5-24 of the Ohio Administrative Code and Section 2925.23 of the Ohio Revised Code and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (19) You did, as the Responsible Pharmacist, on or about December 5, 1996, fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing medication pursuant to prescriptions numbered 435893 and 435894 you and/or a pharmacist under your supervision failed to review the original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and you and/or a pharmacist under your supervision failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.
- (20) You did, as the Responsible Pharmacist, on or about December 27, 1996, fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing medication pursuant to prescriptions numbered 435893 and 435894, you and/or a pharmacist under your supervision failed to review the original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and the pharmacy failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code, and if proven constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.
- (21) You did, on or about December 27, 1996, fail to record your name and/or initials on the alternate recordkeeping system, to wit: when dispensing medication pursuant to prescriptions numbered 435893 and 435894, you used the computer initials of Donald R. Sutton. Such conduct is in violation of Rules 4729-5-17 of the Ohio Administrative Code, and if proven constitutes being guilty of dishonesty and unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.
- (22) You did, as the Responsible Pharmacist, on or about March 10, 1997, fail to preserve prescriptions on file, subject to inspection by the proper officers of the law, to wit: you were, or a pharmacist under your supervision was unable to locate prescription number 435893 dated December 5, 1996. Such conduct is in violation of Rules 4729-5-09, 4729-5-17, and 4729-5-22 of the Ohio Administrative Code and Section 4729.37 of the Ohio Revised Code and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (23) You did, as the Responsible Pharmacist, on or about January 2, 1997, fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing medication pursuant to prescriptions numbered 435675 and 435676, you and/or a pharmacist under your supervision failed to review the original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and you and/or a pharmacist under your supervision failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.
- (24) You did, as the Responsible Pharmacist, on or about January 2, 1997, with purpose to deprive, knowingly obtain or exert control over the property of another by deception, to wit: you and/or a pharmacist under your supervision over-charged the patient \$4.00, pursuant to prescriptions numbered 435675 and 435676, by charging brand-name co-pays when dispensing generic medications. Such conduct is in violation of Sections 2913.02 and 4729.38 of the Ohio Revised Code and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (25) You did, as the Responsible Pharmacist, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: you and/or a pharmacist under your supervision created the following prescription refills for Patient #1, purporting to be legitimate, when there had been no valid order from an authorized prescriber:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/24/95	426170	Tegretol 200mg	30	DRS
12/26/95	426170	Tegretol 200mg	30	DRS
01/27/96	426170	Tegretol 200mg	30	DRS
02/26/96	426170	Tegretol 200mg	30	DRS
03/23/96	426170	Tegretol 200mg	30	DRS
11/24/95	426171	Calan SR 240mg	30	DRS
12/26/95	426171	Calan SR 240mg	30	DRS
01/27/96	426171	Calan SR 240mg	30	DRS
02/26/96	426171	Calan SR 240mg	30	DRS
<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
03/23/96	426171	Calan SR 240mg	30	DRS
12/26/95	426172	Prinivil 10mg	30	DRS
01/27/96	426172	Prinivil 10mg	30	DRS
02/26/96	426172	Prinivil 10mg	30	DRS
03/23/96	426172	Prinivil 10mg	30	DRS

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code (as was in effect during said time period) and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions Chapter 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (26) You did, as the Responsible Pharmacist, on or about the following dates, sell at retail dangerous drugs, to wit: you and/or a pharmacist under your supervision sold the following dangerous drugs to Patient #1 pursuant to unauthorized refills:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/24/95	426170	Tegretol 200mg	30	DRS
12/26/95	426170	Tegretol 200mg	30	DRS
01/27/96	426170	Tegretol 200mg	30	DRS
02/26/96	426170	Tegretol 200mg	30	DRS
03/23/96	426170	Tegretol 200mg	30	DRS
11/24/95	426171	Calan SR 240mg	30	DRS
12/26/95	426171	Calan SR 240mg	30	DRS
01/27/96	426171	Calan SR 240mg	30	DRS
02/26/96	426171	Calan SR 240mg	30	DRS
03/23/96	426171	Calan SR 240mg	30	DRS
12/26/95	426172	Prinivil 10mg	30	DRS
01/27/96	426172	Prinivil 10mg	30	DRS
02/26/96	426172	Prinivil 10mg	30	DRS
03/23/96	426172	Prinivil 10mg	30	DRS

Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code and, if proven, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (27) You did, as the Responsible Pharmacist, on or about February 26, 1996, and March 23, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each occasion, you and/or a pharmacist under your supervision created prescription refills for Patient #1 pursuant to prescription number 428648, written for 30 unit doses of Tylenol w/Codeine #3, when there had been no valid order from an authorized prescriber. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (28) You did, as the Responsible Pharmacist, on or about February 26, 1996, and March 23, 1996, 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., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion, you and/or a pharmacist under your supervision sold 30 unit doses of Tylenol w/Codeine #3 pursuant to prescription number 428648 to Patient #1 without a legitimate purpose. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code (as was in effect during said time period) and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (29) You did, as the Responsible Pharmacist, on or about September 1, 1995, intentionally make and/or knowingly possess a false or forged prescription, to wit: you and/or a pharmacist under your supervision created a refill for Patient #7, pursuant to prescription number 424559 written for 30 unit doses of propoxyphene napsylate 100mg/APAP 650mg, when there had been no such order from an authorized prescriber. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (30) You did, as the Responsible Pharmacist, on or about September 1, 1995, 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, to wit: you and/or a pharmacist under your supervision sold 30 unit doses of propoxyphene napsylate 100mg/APAP 650mg to Patient #7 pursuant to prescription number 424559 without a legitimate purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code (as was in effect during said time period) and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (31) You did, as the Responsible Pharmacist, on or before June 11, 1997, fail to preserve prescriptions on file, subject to inspection by the proper officers of the law, to wit: you and/or a pharmacist under your supervision were unable to locate prescriptions numbered 410686, 411023, 411162, 411995, 412814, 413731, 414686, 415414, 431182 and 431964. Such conduct is in violation of Rules 4729-5-09, 4729-5-17, and 4729-9-22 of the Ohio Administrative Code and Section 4729.37 of the Ohio Revised Code and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (32) You did, as the Responsible Pharmacist, from June 10, 1993, through May 18, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: throughout this 774-day time period, you and/or a pharmacist under your supervision dispensed on 158 occasions, 9,510 unit doses of Hydrocodone 5mg/APAP 500mg to Patient #2, when 4,644 unit doses was the maximum amount authorized by a physician. Of those dispensings, 53% were made by Donald R. Sutton, R.Ph. You and/or a pharmacist under your supervision created refills and/or refilled prescriptions too quickly, over-dispensing 4,866 unit doses. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.
- (33) You did, as the Responsible Pharmacist, on or about June 10, 1993, through May 18, 1996, sell a controlled substance in an amount exceeding one hundred times the bulk

amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: you and/or a pharmacist under your supervision sold 4,866 unit doses of Hydrocodone 5mg/APAP 500mg to Patient #2 without authorization by the prescribing physician and without a legitimate purpose, 53% of those dispensings were made by Donald R. Sutton, R.Ph. Such conduct is in violation of Section 2925.03(A)(10) of the Ohio Revised Code (as was in effect during said time period) and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (34) You did, as the Responsible Pharmacist, from July 5, 1995, through May 10, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each listed occasion you and/or a pharmacist under your supervision dispensed 100 unit doses of Darvocet N-100 to Patient #3 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
07/05/95	422627	DRS
12/05/95	427511	DRS
01/22/96	429082	DRS
03/02/96	429082	DRS
04/12/96	430359	RCS
05/10/96	430359	DRS

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (35) You did, as the Responsible Pharmacist, from July 5, 1995, through May 10, 1996, sell 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., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion you and/or a pharmacist under your supervision sold 100 unit doses of Darvocet N-100 to Patient #3 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
07/05/95	422627	DRS
12/05/95	427511	DRS
01/22/96	429082	DRS
03/02/96	429082	DRS
04/12/96	430359	RCS
05/10/96	430359	DRS

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code (as was in effect during said time period) and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate,

or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (36) You did, as the Responsible Pharmacist, from July 15, 1994, through June 28, 1995, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each occasion the pharmacy dispensed 50 unit doses of Darvocet N-100 to Patient #4 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
07/15/94	417124	RMZ
11/02/95	427086	DRS
02/20/95	427086	DRS
05/25/95	424156	DRS
06/28/95	424156	DRS

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (37) You did, as the Responsible Pharmacist, from July 15, 1994, through June 28, 1995, 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, to wit: on each occasion you and/or a pharmacist under your supervision sold 50 unit doses of Darvocet N-100 to Patient #4 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
07/15/94	417124	RMZ
11/02/95	427086	DRS
02/20/95	427086	DRS
05/25/95	424156	DRS
06/28/95	424156	DRS

Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code (as was in effect during said time period) and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (38) You did, as the Responsible Pharmacist, from August 10, 1993, through February 27, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each occasion you and/or a pharmacist under your supervision dispensed Talacen to Patient #5 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>Quantity</u>	<u>R.Ph.</u>
08/10/93	411310	25	RCS
08/18/93	411310	25	DRS
01/04/94	413829	25	RCS
02/02/94	413829	25	PJM

04/12/94	416030	25	DRS
04/18/94	416030	25	DRS
11/14/94	420557	30	DRS
11/22/94	420557	30	DRS
12/05/94	420557	30	DRS
12/16/94	420557	30	DRS
12/26/94	420557	30	DRS
01/06/95	420557	30	RMZ
01/16/95	421862	30	DRS
01/24/95	421862	30	DRS
02/01/95	421862	30	RCS
02/09/95	421862	30	RCS
03/16/95	422625	20	DRS
03/25/95	422625	30	RCS
04/07/95	422625	30	WMC
09/14/95	426186	20	RCS
09/23/95	426186	30	RCS
10/02/95	426186	30	DRS
01/27/96	428575	25	DRS
02/07/96	428575	25	DRS

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (39) You did, as the Responsible Pharmacist, from August 10, 1993, through February 7, 1996, sell a controlled substance in an amount 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., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion you and/or a pharmacist under your supervision sold Talacen to Patient #5 without a valid prescription and/or without a legitimate purpose:

<u>Date</u>	<u>Rx No.</u>	<u>Quantity</u>	<u>R.Ph.</u>
08/10/93	411310	25	RCS
08/18/93	411310	25	DRS
01/04/94	413829	25	RCS
02/02/94	413829	25	PJM
04/12/94	416030	25	DRS
04/18/94	416030	25	DRS
11/14/94	420557	30	DRS
11/22/94	420557	30	DRS
12/05/94	420557	30	DRS
12/16/94	420557	30	DRS
12/26/94	420557	30	DRS
01/06/95	420557	30	RMZ
01/16/95	421862	30	DRS
01/24/95	421862	30	DRS
02/01/95	421862	30	RCS
02/09/95	421862	30	RCS
03/16/95	422625	20	DRS

03/25/95	422625	30	RCS
04/07/95	422625	30	WMC
09/14/95	426186	20	RCS
09/23/95	426186	30	RCS
10/02/95	426186	30	DRS
01/27/96	428575	25	DRS
02/07/96	428575	25	DRS

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code (as was in effect during said time period) and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (40) You did, as the Responsible Pharmacist, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: you and/or a pharmacist under your supervision created the following prescription refills for Patient #5, purporting to be legitimate, when there had been no valid order from an authorized prescriber:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/10/93	412337	Terazol 7 0.4% cream	1 tube	DRS
02/28/94	412337	Terazol 7 0.4% cream	1 tube	DRS
06/06/94	412337	Terazol 7 0.4% cream	1 tube	DRS

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code (as was in effect during said time periods) and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (41) You did, as the Responsible Pharmacist, on or about the following dates, sell at retail dangerous drugs, to wit: you and/or a pharmacist under your supervision sold the following drugs to Patient #5 pursuant to unauthorized refills:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/10/93	412337	Terazol 7 0.4% cream	1 tube	DRS
02/28/94	412337	Terazol 7 0.4% cream	1 tube	DRS
06/06/94	412337	Terazol 7 0.4% cream	1 tube	DRS

Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (42) You did, as the Responsible Pharmacist, from March 27, 1995, through November 24, 1995, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each listed occasion you and/or a pharmacist under your supervision dispensed 30 unit doses of Darvocet N-100 to Patient #6 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
03/27/95	421578	DRS
06/08/95	421578	WMC
11/24/95	426710	DRS

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (43) You did, as the Responsible Pharmacist, from March 27, 1995, through November 24, 1995, 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, to wit: on each occasion you and/or a pharmacist under your supervision sold 30 unit doses of Darvocet N-100 to Patient #6 without a legitimate purpose:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
03/27/95	421578	DRS
06/08/95	421578	WMC
11/24/95	426710	DRS

Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code (as was in effect during said time period) and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

- (44) You did, as the Responsible Pharmacist, on or about February 28, 1994, and again on or about June 6, 1996, make or utter false or forged prescriptions for dangerous drugs, to wit: you and/or a pharmacist under your supervision created the following prescription refills for Patient #6 purporting to be legitimate when there had been no valid order from an authorized prescriber:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/07/95	426139	Vasotec	30	DRS
12/04/95	426139	Vasotec	30	DRS
05/15/96	426139	Vasotec	30	DRS
12/04/95	426809	Ticlid 250mg	60	DRS
01/10/96	426809	Ticlid 250mg	60	DRS
02/16/96	426809	Ticlid 250mg	60	RCS
04/01/96	426809	Ticlid 250mg	60	DRS
05/15/96	426809	Ticlid 250mg	60	DRS

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code (as was in effect during said time period) and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 2925. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

(45) You did, as the Responsible Pharmacist, on or about the following dates, sell at retail dangerous drugs, to wit: you and/or a pharmacist under your supervision sold the following dangerous drugs to Patient #6 without a legitimate purpose:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/07/95	426139	Vasotec	30	DRS
12/04/95	426139	Vasotec	30	DRS
05/15/96	426139	Vasotec	30	DRS
12/04/95	426809	Ticlid 250mg	60	DRS
01/10/96	426809	Ticlid 250mg	60	DRS
02/16/96	426809	Ticlid 250mg	60	RCS
04/01/96	426809	Ticlid 250mg	60	DRS
05/15/96	426809	Ticlid 250mg	60	DRS

Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code and, if proven, constitutes being guilty of a felony or gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

(46) You did, as the Responsible Pharmacist, on or about March 10, 1997, knowing you had no privilege to do so, falsify and/or alter data and records; and without privilege to do so, obstruct or delay the performance by a public official, to wit: Donald Sutton, a pharmacist employed by Kinsman Pharmacy under your direct supervision, entered a false address into the patient profile information for James R. Martin during an inspection being conducted by Compliance Agent George Pavlich. Such conduct is in violation of Sections 2913.42 and 2921.31 of the Ohio Revised Code and, if proven, constitutes being guilty of a felony or gross immorality and/or guilty of dishonesty or unprofessional conduct in the practice of pharmacy.

For these reasons, the State Board of Pharmacy will determine whether to take action pursuant to Section 4729.16 of the Ohio Revised Code.

YOU ARE HEREBY ADVISED that Section 4729.16 of the Ohio Revised Code states in pertinent part that:

(A) The 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.

IF YOU DESIRE A HEARING, such request 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 your attorney, 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.

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.

PHARMACY

BY ORDER OF THE STATE BOARD OF

DLR:sr (D-991007-026)

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