



# OHIO STATE BOARD OF PHARMACY

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## NUNC PRO TUNC

### ORDER OF THE STATE BOARD OF PHARMACY

(APRIL 23, 2007 FOR APRIL 12, 2007)

Docket Number D-060810-004

*in the matter of:*

**RICHARD J. BERNING, R.PH.**

4000 State Route 132

Batavia, Ohio 45103

R.Ph. Number 03-3-11901

## INTRODUCTION

The matter of Richard J. Berning came for hearing on March 6, 2007, before the following members of the Board: James E. Turner, R.Ph. (presiding); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Richard J. Berning was represented by James Lindon. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

## SUMMARY OF EVIDENCE

State's Witness: Richard Haun, Ohio State Board of Pharmacy

Respondent's Witness: Richard J. Berning, R.Ph., Respondent

### State's Exhibits:

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [08-10-06]
- 1A. State Board of Pharmacy Order in re Richard J. Berning, R.Ph. [08-23-06]
- 1B-1G. Procedurals
2. State Board of Pharmacy Order in re Richard J. Berning, R.Ph. [11-10-04]
3. Indictment, State of Ohio vs. Richard Berning, Case No. B 0604421, Hamilton County Common Pleas Court [05-25-06]; Journal Entry [07-20-06]
4. Statement of Richard J. Berning [04-21-06]
5. Notarized Statement of Richard J. Berning [04-25-06]
6. Report of Prescriptions Created and Submitted for Rebate [04-15-05 to 04-14-06]
7. Copies of Forged Rebate Requests to Astra Zeneca [04-15-05 to 04-03-06]
8. Copies of Forged Rebate Requests to Aventis [10-26-05 to 04-27-06]

9. Copies of Forged Rebate Requests to Schering-Plough [10-03-05 to 12-12-05]

Respondent's Exhibits:

None

**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 Board of Pharmacy indicate that Richard J. Berning was originally licensed by the State of Ohio as a pharmacist on August 4, 1976, pursuant to examination, and is currently licensed to practice pharmacy in Ohio. Records further reflect that Richard J. Berning was previously disciplined by the Board on November 10, 2004.
- (2) Richard J. Berning did, from April 15, 2005, through April 14, 2006, intentionally create false or forged prescriptions, to wit: Richard J. Berning created the following 115 fraudulent prescriptions while practicing pharmacy at CVS/Pharmacy #6123, he assigned prescription numbers, and then deleted the prescriptions from the computer. Richard J. Berning created these documents so that he could submit them to drug companies and obtain cash rebates.

<b>RX#</b>	<b>Date</b>	<b>Drug</b>
32320	04/15/0	Toprol
4	5	XL
32320	04/15/0	
3	5	Crestor
32320	04/15/0	
1	5	Crestor
32320	04/15/0	Toprol
2	5	XL
32367	04/19/0	
7	5	Crestor
32516	04/29/0	
0	5	Crestor
32879	05/25/0	
0	5	Crestor
32895	05/27/0	Toprol
7	5	XL
33342	06/30/0	
1	5	Crestor
33757	08/04/0	
3	5	Crestor
33796	08/08/0	Toprol
8	5	XL
33796	08/08/0	Toprol
9	5	XL
33791	08/15/0	
5	5	Crestor
34180	08/22/0	
5	5	Crestor
34537	08/22/0	
4	5	Crestor
33291	08/22/0	Crestor

6	5	
33258	08/22/0	
5	5	Crestor
34122	08/22/0	
8	5	Crestor
34167	09/04/0	
8	5	Crestor
34202	09/06/0	Toprol
5	5	XL
36838	09/07/0	
0	5	Crestor
34557	09/19/0	
3	5	Crestor
34538	09/19/0	
0	5	Crestor
32911	09/19/0	
1	5	Crestor
34577	09/28/0	
9	5	Crestor
34556	10/03/0	
0	5	Nasonex
34558	10/04/0	
2	5	Crestor
34941	10/12/0	
7	5	Crestor
<b>RX#</b>	<b>Date</b>	<b>Drug</b>
34908	10/12/0	
3	5	Crestor
34916	10/12/0	
2	5	Crestor
34557	10/19/0	
2	5	Crestor
34941	10/19/0	
0	5	Crestor
34941	10/19/0	
1	5	Crestor
34917	10/19/0	
1	5	Crestor
34868	10/26/0	
7	5	Penlac
34883	10/26/0	
7	5	Penlac
34869	10/26/0	
2	5	Penlac
34884	10/27/0	
0	5	Penlac
34908	10/29/0	
7	5	Nasonex
34908	10/29/0	
4	5	Penlac
34909	10/29/0	
3	5	Penlac
34917	10/30/0	
4	5	Nasonex
34910	10/30/0	
5	5	Penlac
34940	11/01/0	
7	5	Nasonex
34942	11/01/0	Nasonex

1	5	
34961	11/01/0	
1	5	Nasonex
34961	11/01/0	
7	5	Nasonex
35484	11/07/0	
5	5	Crestor
35516	11/07/0	
3	5	Crestor
35507	11/09/0	
6	5	Crestor
35467	11/09/0	
8	5	Crestor
35537	11/14/0	
6	5	Crestor
35559	11/16/0	
4	5	Crestor
35351	11/19/0	
0	5	Penlac
35281	11/23/0	
4	5	Penlac
35282	11/24/0	
1	5	Penlac
35282	11/24/0	
5	5	Penlac
35282	11/24/0	Benzacli
3	5	n
35297	11/26/0	Benzacli
6	5	n
35297	11/26/0	
5	5	Penlac
35307	11/27/0	
3	5	Penlac
35351	11/29/0	
1	5	Penlac
35467	12/07/0	
4	5	Nasonex
35497	12/08/0	
8	5	Nasonex
35484	12/08/0	
4	5	Nasonex
35499	12/08/0	
3	5	Nasonex
35507	12/10/0	
8	5	Nasonex
35516	12/11/0	
6	5	Nasonex
35537	12/12/0	
4	5	Nasonex
33343	12/21/0	Toprol
1	5	XL
33309	12/21/0	
9	5	Crestor
35717	12/23/0	Benzacli
6	5	n
35726	12/24/0	
8	5	Penlac
35726	12/24/0	Benzacli
9	5	n

35735	12/25/0	
7	5	Penlac
35747	12/26/0	
1	5	Penlac
35746	12/26/0	
3	5	Penlac
35746	12/26/0	Benzacli
5	5	n
35747	12/26/0	Benzacli
3	5	n
35765	12/27/0	
1	5	Penlac
35765	12/27/0	Benzacli
9	5	n
<b>RX#</b>	<b>Date</b>	<b>Drug</b>
35765	12/27/0	
8	5	Penlac
34139	12/27/0	
9	5	Crestor
36125	01/02/0	
5	6	Penlac
33836	01/04/0	
1	6	Crestor
33819	01/04/0	Toprol
7	6	XL
35979	01/11/0	Benzacli
5	6	n
36092	01/18/0	
8	6	Penlac
36108	01/19/0	Benzacli
6	6	n
36137	01/22/0	Benzacli
0	6	n
36142	01/22/0	Benzacli
4	6	n
36136	01/22/0	
9	6	Penlac
36165	01/23/0	Benzacli
1	6	n
36179	01/24/0	
8	6	Penlac
36179	01/24/0	Benzacli
9	6	n
36972	03/15/0	Benzacli
5	6	n
36972	03/15/0	
4	6	Penlac
36972	03/15/0	
1	6	Crestor
36788	03/15/0	
6	6	Crestor
36990	03/16/0	Benzacli
9	6	n
37010	03/17/0	Benzacli
8	6	n
37020	03/18/0	Benzacli
2	6	n
37025	03/19/0	Benzacli
8	6	n

37047 7	03/20/0 6	Benzacli n
37048 1	03/20/0 6	Penlac
37063 0	03/21/0 6	Penlac
37062 5	03/21/0 6	Penlac
37062 7	03/21/0 6	Benzacli n
33272 8	03/27/0 6	Crestor
34201 6	03/27/0 6	Crestor
36972 0	03/27/0 6	Crestor
36972 3	04/03/0 6	Crestor
36972 2	04/03/0 6	Crestor
37380 5	04/12/0 6	Benzacli n
37416 1	04/14/0 6	Benzacli n

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

- (3) Richard J. Berning did, from April 15, 2005, through April 3, 2006, with purpose to deprive, knowingly obtain or exert control over money, the property of Astra Zeneca, by deception, to wit: Richard J. Berning created false prescriptions and sent them to Astra Zeneca to obtain rebate money for sales that did not exist. Richard J. Berning sent thirty-three rebate requests to this drug manufacturer and fraudulently obtained \$915.00. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Richard J. Berning did, from October 26, 2005, through April 27, 2006, with purpose to deprive, knowingly obtain or exert control over money, the property of Aventis, by deception, to wit: Richard J. Berning created false prescriptions and sent them to Aventis to obtain rebate money for sales that did not exist. Richard J. Berning sent thirty-eight rebate requests to this drug manufacturer and fraudulently obtained \$730.00. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (5) Richard J. Berning did, from October 3, 2005, through December 12, 2005, engage in conduct which, if successful, would have constituted a theft. Specifically, Richard J. Berning did, with purpose to deprive, knowingly attempt to obtain or exert control over money, the property of Schering Plough, by deception, to wit: Richard J. Berning created false prescriptions and sent them to Schering Plough in an attempt to obtain rebate money for sales that did not exist. Richard J. Berning sent fourteen rebate requests to this drug manufacturer, yet his conduct was discovered before he was given money. Such conduct is in violation of Section 2923.02 of the Ohio Revised Code.

## CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (5) of the Findings of Fact constitute being guilty of gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraphs (2) through (5) 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.
- (3) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

## DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Richard J. Berning as follows:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends for one year the pharmacist identification card, No. 03-3-11901, held by Richard J. Berning and such suspension is effective as of the date of the mailing of this Order.
  - (1) Richard J. Berning, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
  - (2) Richard J. Berning, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.
- (B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of one thousand dollars (\$1,000.00) on Richard J. Berning and payment of the monetary penalty is due and owing within thirty days of the mailing of this Order. The remittance should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.
- (C) Beginning one year from the effective date of this Order, the State Board of Pharmacy places Richard J. Berning on probation for five years. The terms of probation are as follows:

- (1) The State Board of Pharmacy hereby declares that Richard J. Berning's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.
- (2) Richard J. Berning may not serve as a responsible pharmacist.
- (3) Richard J. Berning must not violate the drug laws of Ohio, any other state, or the federal government.
- (4) Richard J. Berning must abide by the rules of the State Board of Pharmacy.
- (5) Richard J. Berning must comply with the terms of this Order.
- (6) Richard J. Berning's license is deemed not in good standing until successful completion of the probationary period.
- (7) Any violation of probation may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.

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

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-6/Nay-2).

MOTION CARRIED.

SO ORDERED.

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

Section 119.12 of the Ohio Revised Code authorizes an appeal from this Order. An order that denied admission to an examination, or denied the issuance or renewal of a license or registration, or revoked or suspended a license, may be appealed to the court of common pleas in the Ohio county of your place of business or in your Ohio county of residence. Any other order may be appealed to the Court of Common Pleas of Franklin County, Ohio.

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

**BY ORDER OF THE STATE BOARD OF PHARMACY**

ORDER MAILED & EFFECTIVE: APRIL 23, 2007

By: \_\_\_\_\_  
William T. Winsley, M.S., R.Ph., Executive Director



# OHIO STATE BOARD OF PHARMACY

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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-031208-039)

In The Matter Of:

**RICHARD J. BERNING, R.Ph.**

4000 St. Rt. 132

Batavia, Ohio 45103

(R.Ph. No. 03-3-11901)

### INTRODUCTION

THE MATTER OF RICHARD J. BERNING CAME FOR HEARING ON TUESDAY, OCTOBER 5, 2004, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: LAWRENCE J. KOST, R.Ph.; (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

RICHARD J. BERNING WAS REPRESENTED BY JAMES LINDON AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

### SUMMARY OF EVIDENCE

#### State's Witnesses

1. Kevin J. Kinneer, Ohio State Board of Pharmacy

#### Respondent's Witnesses

1. Richard J. Berning, R.Ph., Respondent

#### State's Exhibits

1. Notice of Opportunity For Hearing letter [12-09-03]  
1A-1F. Procedurals
2. License lapse notification letter to Richard J. Berning [09-05-03]
3. Renewal Application for Pharmacist License of Richard J. Berning [09-10-03];  
C.P.E. Report Form [09-10-03]; Copy of Power-Pak C.E. Statement of C.P.E.  
Credit [10-01-03]
4. CVS Pharmacy #5431 Prescription Register report [09-17-03]
5. CVS Pharmacy #5431 Prescription Register and Edited Prescriptions reports [09-21-03]
6. CVS Pharmacy #5431 Prescription Register report [09-22-03]
7. CVS Pharmacy #5431 Prescription Register and Edited Prescriptions reports [09-25-03]

8. CVS Pharmacy #5431 Prescription Register report [09-26-03]
9. CVS Pharmacy #5431 Prescription Register report [09-27-03]
10. CVS Pharmacy #5431 Prescription Register and Edited Prescriptions reports [09-30-03]

Respondent's Exhibits

- A. Richard Berning Timeline [09-04-03 to 10-01-03]

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 Richard J. Berning was originally licensed by the State of Ohio as a pharmacist on August 4, 1976, pursuant to examination, and is currently licensed to practice pharmacy in Ohio.
- (2) Richard J. Berning did, on or about September 17, 2003, while not a pharmacist, dispense or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: after allowing his license to practice pharmacy to lapse, and after having been warned against practicing pharmacy without a license, Richard J. Berning dispensed prescriptions as indicated on the daily dispensing log sheet. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (3) Richard J. Berning did, on or about September 21, 2003, while not a pharmacist, dispense or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: after allowing his license to practice pharmacy to lapse, and after having been warned against practicing pharmacy without a license, Richard J. Berning dispensed prescriptions as indicated on the daily dispensing log sheet. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (4) Richard J. Berning did, on or about September 22, 2003, while not a pharmacist, dispense or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: after allowing his license to practice pharmacy to lapse, and after having been warned against practicing pharmacy without a license, Richard J. Berning dispensed prescriptions as indicated on the daily dispensing log sheet. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (5) Richard J. Berning did, on or about September 25, 2003, while not a pharmacist, dispense or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: after allowing his license to practice pharmacy to lapse, and after having been warned against practicing pharmacy without a license, Richard J. Berning dispensed prescriptions as indicated on the daily dispensing log sheet. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (6) Richard J. Berning did, on or about September 26, 2003, while not a pharmacist, dispense or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: after allowing his license to practice pharmacy to lapse, and after having been warned against practicing pharmacy without a license, Richard J. Berning dispensed prescriptions as indicated on the daily dispensing log sheet. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

- (7) Richard J. Berning did, on or about September 27, 2003, while not a pharmacist, dispense or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: after allowing his license to practice pharmacy to lapse, and after having been warned against practicing pharmacy without a license, Richard J. Berning dispensed prescriptions as indicated on the daily dispensing log sheet. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (8) Richard J. Berning did, on or about September 30, 2003, while not a pharmacist, dispense or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: after allowing his license to practice pharmacy to lapse, and after having been warned against practicing pharmacy without a license, Richard J. Berning dispensed prescriptions as indicated on the daily dispensing log sheet. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

#### CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (8) 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) The State Board of Pharmacy concludes that paragraphs (2) through (8) 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 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

#### DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby adjudicates the matter of Richard J. Berning as follows:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of one thousand dollars (\$1,000.00) on Richard J. Berning and payment of the monetary penalty is due and owing within thirty days of the mailing of this Order. The remittance should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.
- (B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby places Richard J. Berning on probation for two years from the effective date of this Order with the following conditions:
  - (1) Richard J. Berning must obtain, within two years from the effective date of this Order, two hours (0.2 CEUs) of Board approved continuing pharmacy education in Jurisprudence, which may not also be used for license renewal. If proof of successful completion is not submitted to the Board office before the end of the probation period, Richard J. Berning will remain on probation until this condition is achieved.

- (2) Richard J. Berning will be audited for two continuing pharmacy education cycles.
- (3) Richard J. Berning's license is deemed not in good standing until successful completion of the probationary period.
- (4) Richard J. Berning must not violate the drug laws of Ohio, any other state, or the federal government.
- (5) Richard J. Berning must abide by the rules of the State Board of Pharmacy.
- (6) Richard J. Berning must comply with the terms of this Order.
- (7) Any violation of probation may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.

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

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-6/Nay-2).

MOTION CARRIED.

SO ORDERED.

**BY ORDER OF THE STATE BOARD OF PHARMACY**

ORDER MAILED & EFFECTIVE: NOVEMBER 10, 2004

By: \_\_\_\_\_  
William T. Winsley, M.S., R.Ph., Executive Direct