

ORDER OF THE STATE BOARD OF PHARMACY  
(Docket No. D-991007-027)

In The Matter Of:

**DONALD ROBERT SUTTON, R.Ph.**  
7333 Perkins-Greenville Road  
Kinsman, Ohio 44428  
(R.Ph. No. 03-3-12930)

INTRODUCTION

THE MATTER OF DONALD ROBERT 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.

DONALD ROBERT 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 Donald Robert Sutton was originally licensed in the state of Ohio on August 8, 1979, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) Donald Robert Sutton did, after being warned by Board agents on May 2, 1994, fail to record required information when dispensing prescriptions, to wit: Donald Robert Sutton 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 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.
- (3) Donald Robert Sutton did, 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: Donald Robert Sutton failed to provide previously requested documents during an inspection, and due to a physical 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.
- (4) Donald Robert Sutton did, on or about November 25, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: Donald Robert Sutton 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 2925.23 of the Ohio Revised Code.
- (5) Donald Robert Sutton did, on or about November 25, 1996, fail to record required information when dispensing prescriptions, to wit: Donald Robert Sutton 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, name of pharmacist who transferred the prescription, 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.

- (6) Donald Robert Sutton did, on or about November 25, 1996, fail to perform prospective drug utilization review and patient counseling, to wit: Donald Robert Sutton failed to review original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Donald Robert Sutton failed to offer patient counseling when dispensing medication pursuant to prescriptions numbered 435675 and 435676. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.
- (7) Donald Robert Sutton did, on or about November 25, 1996, with purpose to deprive, knowingly obtain or exert control over the property of another by deception, to wit: Donald Robert Sutton 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.
- (8) Donald Robert Sutton did, on or about December 5, 1996, intentionally make and/or knowingly possess a false or forged prescription, to wit: Donald Robert Sutton 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.
- (9) Donald Robert Sutton did, 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, Donald Robert Sutton failed to review the original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Donald Robert Sutton failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.
- (10) Donald Robert Sutton did, on or about March 10, 1997, fail to preserve prescriptions on file, subject to inspection by the proper officers of the law, to wit: Donald Robert Sutton 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.
- (11) Donald Robert Sutton did, on or about January 2, 1997, fail to perform prospective drug utilization review and patient counseling, to wit: Donald Robert Sutton failed to review original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Donald Robert Sutton failed to offer patient counseling when dispensing medication pursuant to prescriptions numbered 435675 and 435676. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.

- (12) Donald Robert Sutton did, on or about January 2, 1997, with purpose to deprive, knowingly obtain or exert control over the property of another by deception, to wit: Donald Robert Sutton 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.
- (13) Donald Robert Sutton did, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: Donald Robert Sutton 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).

- (14) Donald Robert Sutton did, on or about the following dates, sell at retail dangerous drugs, to wit: Donald Robert Sutton 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.

- (15) Donald Robert Sutton did, 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, Donald Robert Sutton 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.
- (16) Donald Robert Sutton did 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 or about February 26, 1996, and again on or about March 23, 1996, Donald Robert Sutton 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).
- (17) Donald Robert Sutton did, on or before June 11, 1997, fail to preserve prescriptions on file, subject to inspection by the proper officers of the law, to wit: Donald Robert Sutton was unable to locate prescriptions numbered 411995, 412814, 414686, and 431182. 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.
- (18) Donald Robert Sutton did, from on or about 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, Kinsman Pharmacy 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, over-dispensing 4,866 unit doses. Donald Robert Sutton dispensed approximately 53% of the drugs by creating refills and/or refilling prescriptions too quickly. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (19) Donald Robert Sutton did, on or about June 10, 1993, through May 18, 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: Kinsman Pharmacy sold 4,866 unit doses of Hydrocodone 5mg/APAP 500mg to Patient #2 without authorization by the prescribing physician and without a legitimate purpose. Donald Robert Sutton sold 53% of the drugs. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code (as was in effect during said time period).

- (20) Donald Robert Sutton did, from July 5, 1995, through May 10, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each occasion Donald Robert Sutton dispensed 100 unit doses of Darvocet N-100 to Patient #3 by creating unauthorized refills:

<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
05/10/96	430359	DRS

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

- (21) Donald Robert Sutton did, from July 5, 1995, through May 10, 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 Donald Robert Sutton 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
05/10/96	430359	DRS

Such conduct is in violation of Chapter 4729-5 of the Ohio Administrative Code and Section 2925.03(A)(5) of the Ohio Revised Code (as was in effect during said time period).

- (22) Donald Robert Sutton did, from November 2, 1995, through June 28, 1995, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each occasion Donald R. Sutton dispensed 50 unit doses of Darvocet N-100 to Patient #4 by creating unauthorized refills:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
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.

- (23) Donald Robert Sutton did, from November 2, 1995, 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 Donald Robert Sutton 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>
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).

- (24) Donald Robert Sutton did, from August 8, 1993, through February 27, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each occasion Donald Robert Sutton dispensed Talacen to Patient #5 by creating unauthorized refills:

<u>Date</u>	<u>Rx No.</u>	<u>Quantity</u>	<u>R.Ph.</u>
08/18/93	411310	25	DRS
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
01/16/95	421862	30	DRS
01/24/95	421862	30	DRS
03/16/95	422625	20	DRS
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.

- (25) Donald Robert Sutton did, from August 10, 1993, through February 7, 1996, sell a controlled substance in an amount 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 Donald Robert Sutton 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>
08/18/93	411310	25	DRS
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
01/16/95	421862	30	DRS
01/24/95	421862	30	DRS
03/16/95	422625	20	DRS
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)(5) of the Ohio Revised Code (as was in effect during said time period).

- (26) Donald Robert Sutton did, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: Donald Robert Sutton 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).

- (27) Donald Robert Sutton did, on or about the following dates, sell at retail dangerous drugs, to wit: Donald Robert Sutton 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.

- (28) Donald Robert Sutton did, on or about March 27, 1995, and again on or about November 24, 1995, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each occasion Donald Robert Sutton 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
11/24/95	426710	DRS

Such conduct is in violation of Chapter 4729-5 of the Ohio Administrative Code and Section 2925.23(B) of the Ohio Revised Code.

- (29) Donald Robert Sutton did, on or about March 27, 1995, and again on or about 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 Donald Robert Sutton 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
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).

- (30) Donald Robert Sutton did, from November 7, 1995, through May 15, 1996, make or utter false or forged prescriptions for dangerous drugs, to wit: Donald Robert Sutton 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
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).

- (31) Donald Robert Sutton did, from November 7, 1995, through May 15, 1996, sell at retail dangerous drugs, to wit: Donald Robert Sutton 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
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.

- (32) Donald Robert Sutton did, 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 Robert Sutton 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 (32) 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), (3), (4), (7), (8), (10), (12) through (16), and (18) through (31) 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, and on the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy takes the following actions in the matter of Donald Robert Sutton:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-3-12930, held by Donald Robert Sutton and such suspension is effective as of the date of the mailing of this Order.
- (1) Donald Robert Sutton, 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) Donald Robert Sutton, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return the identification card and license to the offices of the State Board of Pharmacy within ten days after receipt of this Order. The identification card and wall certificate should be forwarded by certified mail, return receipt requested.

- (B) Two years after the effective date of this Order, the Board will reinstate Donald Robert Sutton's license to practice pharmacy in Ohio provided that:
- (1) Donald Robert Sutton obtains, within 90 days of the effective date of this Order, a full psychiatric or psychological evaluation by a licensed psychiatrist or psychologist that includes a recommended treatment plan for anger control and immediately submits to the Board documentation from the psychiatrist or psychologist of compliance with this provision.
  - (2) Donald Robert Sutton submits to the Board, before two years from the effective date of this Order, the final report of the psychiatrist or psychologist regarding Donald Robert Sutton's compliance with the treatment plan and verification of his fitness for readmission into the practice of pharmacy.
  - (3) Donald Robert Sutton takes and successfully completes the Jurisprudence Examination offered by the Board. If Donald Robert Sutton has not successfully completed the examination prior to two years from the effective date of this Order, his license will be reinstated after this condition has been achieved.
- (C) Upon reinstatement, the Board places the pharmacist identification card, No. 03-3-12930, of Donald Robert Sutton on probation for five years from the date the identification card is issued, with the following conditions:
- (1) The State Board of Pharmacy hereby declares that Donald Robert Sutton'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) Donald Robert Sutton may not serve as a responsible pharmacist.
  - (3) Donald Robert Sutton must not violate the drug laws of the state of Ohio, any other state, or the federal government.
  - (4) Donald Robert Sutton must abide by the rules of the Ohio State Board of Pharmacy.
  - (5) Donald Robert Sutton must comply with the terms of this Order.

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 the 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-7/Nay-0).  
MOTION CARRIED.  
SO ORDERED.

**ORDER EFFECTIVE JUNE 14, 2000**