



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-070530-050)

In The Matter Of:

MARK TODD GARY, R.Ph.

7404 Preakness Lane

Hamilton, Ohio 45011

(R.Ph. No. 03-3-18639)

INTRODUCTION

THE MATTER OF MARK TODD GARY CAME FOR HEARING ON MARCH 4, 2008, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: GREGORY BRAYLOCK, R.Ph. (presiding); ELIZABETH I. GREGG, R.Ph.; RICHARD F. KOLEZYNSKI, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; HEATHER L. PASQUALE, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; JAMES E. TURNER, R.Ph.; AND JEROME J. WIESENHAHN, R.Ph.

MARK TODD GARY WAS REPRESENTED BY ELIZABETH Y. COLLIS. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witness

1. Betty Jones, R.Ph., Ohio State Board of Pharmacy

Respondent's Witness

1. Mark Todd Gary, R.Ph., Respondent

State's Exhibits

1. Notice of Opportunity For Hearing Letter [05-30-07]
 - 1A-1D. Procedurals
 - 1E. Amendment/Addendum Notice [11-27-07]
 - 1F-1P. Procedurals
2. Medication Administration Report, Peninsula Regional Medical Center for Anne Wygal [03-07-06 to 03-17-06]
 - 2A. Discharge Summary from Peninsula Regional Medical Center for Anne Wygal [03-17-06]
 - 2B. Physician Order for Amyaryl 8 mg BID [03-17-06]
 - 2C. Computer Screen Print Out showing Order Processing for Rx #5155306 [03-17-06]
 - 2D. Drug Facts and Comparisons Antidiabetic Agents for Glimpiride® [February 2007]
 - 2E. Ohio Administrative Code (OAC) Rule 4729-5-20 (Prospective Drug Utilization Review) [04-27-07]
 - 2F. Medication Record for Anne Wygal [03-17-06]

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- 2G. Kettering Medical Center Emergency Nursing Record for Anne Wygal; History and Physical [03-24-06]
- 2H. Ohio Department of Health Certificate of Death for Ruby Anne Wygal [09-27-06]
- 2I. Notarized Statement of Mark Todd Gary [05-03-06]
- 2J. Ohio State Board of Pharmacy News [February 2005]
- 2K. Notarized Statement of Vickie Haury [10-19-07]
- 3. Notarized Statement of Vickie Haury [05-25-06]
- 4-4B. Cherith Care Center Physician's Order Form [01-13-06]; Order Processing Computer Screen for Rx #4959827 [01-13-06]; Receipt for Prescriptions Delivered to Cherith Care Center [01-13-06]
- 5-5B. Physician's Telephone Order Form [01-20-06]; Order Processing Computer Screen for Rx #4979170 [01-20-06]; Receipt for Prescriptions Delivered to Deupree-Nursing [01-20-06]
- 6-6B. Two Physician's Telephone Order Forms [02-06-06]; Order Processing Computer Screen for Rx #5033147 [02-07-06]; Receipt for Prescriptions Delivered to Ohio Valley Manor [02-08-06]
- 7-7B. Two Physician's Telephone Order Forms [02-22-06]; Order Processing Computer Screen for Rx #5081389 [02-22-06]; Receipt for Prescriptions Delivered to Belle Manor Nursing [02-22-06]
- 8-8B. Physician's Telephone Order Form [03-08-06]; Order Processing Computer Screen for Rx #5124010 [03-08-06]; Receipt for Prescriptions Delivered to Dobbins Nursing [03-08-06]
- 9-9B. Physician's Telephone Order Form [03-07-06]; Order Processing Computer Screen for Rx #5123145 [03-08-06]; Receipt for Prescriptions Delivered to Dual Manor [03-08-06]
- 10-10B. Physician's Telephone Order Form [04-05-06]; Order Processing Computer Screen for Rx #5212024 [04-05-06]; Receipt for Prescriptions Delivered to Twin-Towers Nursing [04-08-06]
- 11-11B. Physicians Telephone Order Form [04-07-06]; Order Processing Computer Screen for Rx #5219820 [04-07-06]; Receipt for Prescriptions Delivered to St. Margaret Hall [04-07-06]
- 12-12B. Physician's Telephone Order Form [04-11-06]; Order Processing Computer Screen for Rx #5228504 [04-11-06]; Receipt of Prescriptions Delivered to Heinzer Developmental [04-11-06]
- 13-13B. Physician's Telephone Order Form [01-03-06]; Order Processing Computer Screen for Rx #4929496 [01-03-06]; Receipt for Prescriptions Delivered to Lutheran Village of Columbus [01-03-06]
- 14-14A. Patient Medication Orders [01-06-06]; Order Processing Computer Screen for Rx #4940294 [01-06-06]
- 15-15B. Two Physician's Telephone Orders [01-11-06]; Order Processing Computer Screen for Rx #4953069 [01-11-06]; Receipt for Prescriptions Delivered to Westminster-Thurber [01-11-06]
- 16-16A. Physician's Telephone Order Form [01-16-06]; Order Processing Computer Screen for Rx #4967324 [01-16-06]
- 17-17B. Physician's Telephone Order Form [01-24-06]; Order Processing Computer Screen for Rx #4989245 [01-24-06]; Receipt for Prescriptions Delivered to Columbus Colony Elderly [01-24-06]
- 18-18B. Physician's Telephone Order Form [01-27-06]; Order Processing Computer Screen for Rx #5001494 [01-27-06]; Receipt for Prescriptions Delivered to McAuley-Mercy [01-27-06]

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- 19-19B. Pharmacy Telephone Order Sheet [02-14-06]; Order Processing Computer Screen for Rx #5056384 [02-14-06]; Receipt for Prescriptions Delivered to The Beechwood Home [02-14-06]
- 20-20B. Physician's Medication Order Form [03-09-06]; Order Processing Computer Screen for Rx #5129597 [03-09-06]; Receipt for Prescriptions Delivered to Meadowbrook Care Center [03-09-06]
- 21-21B. Physician's Order Form [03-09-06]; Order Processing Form for Rx #5130531 [03-09-06]; Receipt for Prescriptions Delivered to Bethany Lutheran Village [03-09-06]
- 22-22B. Physicians Order Form [03-09-06]; Order Processing Computer Screen for Rx #5130306 [03-09-06]; Receipt for Prescriptions Delivered to Terrace-Mercy [03-09-06]
- 23-23B. Prescription for Ativan 1mg [03-09-06]; Order Processing Form for Rx #5129898 [03-10-06]; Order Processing Computer Screen [03-09-06]; Receipt for Prescriptions Delivered to Front Gate [03-09-06]
- 24-24B. Medication Treatment Administration Record [03-10-06]; Order Processing Computer Screen for Rx #5133872 [03-10-06]; Receipt for Prescriptions Delivered to Gateway Rehab-Florence [03-10-06]
- 25-25B. Patient Medical Orders [03-10-06]; Order Processing Computer Screen for Rx #5133521 [03-10-06]; Receipt for Prescriptions Delivered to Swan Creek Retirement [03-10-06]
- 26-26B. Physician's Telephone Order Form [03-27-06]; Order Processing Computer Screen for Rx #5184182 [03-28-06]; Receipt for Prescriptions Delivered to Columbus Colony Elderly [03-28-06]
- 27-27B. Physician's Medication Order Form [03-31-06]; Order Processing Computer Screen for Rx #5199291 [03-31-06]; Receipt for Prescriptions Delivered to Gateway Rehab-Florence [03-31-06]
- 28-28B. Two Physician's Telephone Order Forms [04-06-06]; Order Processing Computer Screen for Rx #5216470 [04-06-06]; Receipt for Prescriptions Delivered to Lincoln Crawford [04-06-06]
- 29-29B. Referral for Patient Transfer [04-07-06]; Twelve Order Processing Computer Screens for Rx #5219493, Rx #5219494, Rx #5219497, Rx #5219498, Rx #5219500, Rx #5219502, Rx #5219503, Rx #5219506, Rx #5219507, Rx #5219510, Rx #5219514, Rx #5219516 [04-07-06]; Receipt for Prescriptions Delivered to Green Hills [04-07-06]
- 30-30B. Physicians Order Form [05-05-06]; Order Processing Computer Screen for Rx #5305141 [05-05-06]; Receipt for Prescriptions Delivered to Bethany Village [05-05-06]
- 31-31B. Physician's Medication Order Form [05-05-06]; Order Processing Computer Screen for Rx #5304015 [05-05-06]; Receipt for Prescriptions Delivered to St. Theresa-Mercy [05-05-06]
- 32-32B. Physician's Order and Signature [05-12-06]; Order Processing Computer Screen for Rx #5325040 [05-12-06]; Receipt for Prescriptions Delivered to Dayton Rehab Institute [05-12-06]
- 33-33B. Pharmacy Telephone Order Sheet [06-08-06]; Order Processing Computer Screen for Rx #5404299 [06-08-06]; Receipt for Prescriptions Delivered to Lutheran Village of Columbus [06-08-06]
- 34-34A. Physician's Telephone Order Form [06-15-06]; Order Processing Computer Screen for Rx #5424065 [06-15-06]
- 35-35B. Pharmacy Telephone Order Sheet [05-03-06]; Order Processing Computer Screen for Rx #5296296 [05-03-06]; Receipt for Prescriptions Delivered to Brethren's Home-Nursing [05-03-06]

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- 36-36B. Medication Reorders-Refills Only Form [05-04-06]; Order Processing Computer Screen for Rx #5014859 [02-01-06]; Receipt for Prescriptions Delivered to Green Hills [05-04-06]
- 37-37B. Physician's Telephone Order Forms [05-26-06]; Order Processing Computer Screen for Rx #5368014 [05-26-06]; Receipt for Prescriptions Delivered to Deupree-Nursing [05-26-06]
- 38-38A. Order Processing Computer Screen for Rx #5167532 [03-21-06]; Receipt for Prescriptions Delivered to Ohio Valley Manor [05-23-06]
- 39-39B. Two Physician's Telephone Order Forms [10-14-05]; Order Processing Computer Screen for Rx #4702664 [10-14-05]; Receipt for Prescriptions Delivered to Wellspring [10-14-05]
- 40-40B. Two Physician's Telephone Order Forms [10-14-05]; Order Processing Computer Screen for Rx #4703685 [10-14-05]; Receipt for Prescriptions Delivered to St. Johns-Mercy [10-14-05]
- 41-41B. Medication Reorders-Refills Only Form [09-22-05]; Order Processing Computer Screen for Rx #4478766 [07-23-05]; Receipt for Prescriptions Delivered to St. Johns-Mercy [09-22-05]
- 42-42B. Doctor's Orders and Progress Notes [09-27-05]; Purged Order Information Form and Purged Billing Profile for Rx #4652234 [09-27-05]; Receipt for Prescriptions Delivered to Gateway Rehabilitation Hospital [09-27-05]
- 43-43C. Medication Reorders-Refills Only Form [08-29-05]; Order Processing Computer Screen for Rx #4366945 [08-29-05]; Receipt for Prescriptions Delivered to Hillebrand Nursing [08-29-05]; Skilled Care Pharmacy Medication Incident Report Form [11-03-05]
- 44-44B. Medication Reorders-Refills Only [09-17-05]; Order Processing Computer Screen for Rx #4623810 [09-17-05]; Receipt for Prescriptions Delivered to HMF-Memorial [09-17-05]
- 45-45B. Discharge Medications Form for The Ohio State University Medical Center [09-20-05]; Order Processing Computer Screen for Rx #4634535 [09-21-05]; Receipt for Prescriptions Delivered to Lutheran Village of Columbus [09-21-05]
- 46-46C. Emergency Box Audit Sheet [09-13-05]; Order Processing Computer Screen for Rx #4612262 [09-13-05]; Receipt for Prescriptions Delivered to Belle Manor Nursing [09-13-05]; Skilled Care Pharmacy Medication Incident Report Form [11-03-05]
- 47-47B. Physician's Telephone Orders Form [09-20-05]; Order Processing Computer Screen for Rx #4632135 [09-20-05]; Receipt for Prescriptions Delivered to St. Margaret Hall [09-20-05]
- 48-48B. Medication Records-Refills Only [09-01-05]; Purged Order Information and Purged Billing Profiles for Rx #4581541 [09-01-05]; Receipt for Prescriptions Delivered to Westminster-Thurber [09-15-05]
- 49-49B. Physician's Telephone Order [09-15-05]; Order Processing Computer Screens for Rx #4619491 [09-15-05]; Receipt for Prescriptions Delivered to Schroder Nurs-Mercy [09-15-05]
- 50-50B. Physician's Telephone Orders Form [09-06-05]; Order Processing Computer Screen for Rx #4593975 [09-07-05]; Receipt for Prescriptions Delivered to Good Shepherd of Ashland [09-07-05]
- 51-51C. Rx #310817C [02-27-07]; Camden Village Pharmacy Daily Prescription Log [02-27-07]; Notarized Statement of Jon Rauschenbach, R.Ph. [11-23-07]
- 52-52A. Rx #331377 [09-10-07]; ScriptPro Script Processing Details [09-10-07]
- 53-53B. Prescription written for Buspar 15 mg [09-12-07]; Rx #331954 [09-14-07]; ScriptPro Script Processing Details [09-14-07]

- 54-54B. Prescription written for Lyrica 100 mg [09-21-07]; Rx #332937C [09-24-07]; ScriptPro Script Processing Details [09-24-07]
- 55-55B. Prescription written for Coumadin 2 mg [09-23-07]; Rx #332919 [09-24-07]; ScriptPro Script Processing Details [09-24-07]
- 56-56D. Prescription written for Rosula [date illegible]; Rx 332987 [09-24-07]; ScriptPro Script Processing Details [09-24-07]
- 57-57B. Prescription written for Amoxicillin [10-01-07]; Rx #333822 [10-01-07]; ScriptPro Script Processing Details [10-01-07]
- 58-58B. Prescription written for Cipro 500 [not dated]; Rx #334260 [10-04-07]; ScriptPro Script Processing Details [10-04-07]
- 59-59B. Prescription written for Flexeril 10 mg [10-09-07]; Rx #335836 [10-18-07]; ScriptPro Script Processing Details [10-18-07]
- 60-60C. Rx #319809 [05-17-07]; Pharmacy label for Rx 319809 [11-01-07]; ScriptPro Script Processing Details [11-01-07]; Photograph of Humalog Mix 75/25 Pen [not dated]
- 61-61A. Rx #338307 [11-09-07]; ScriptPro Script Processing Details [11-09-07]
- 62. Notarized Statement of Carol A. Perry [10-19-07]

Respondent's Exhibits

- A. Request for Continuance of Pharmacy Board Hearing [01-09-08]
- B. Motion to Dismiss [01-09-08]
- C. Motion for Clarification of Charges and Motion to Strike [01-16-08]
- D. Request for Issuance of Subpoenas [01-16-08]
- D1. Second Request for Issuance of Subpoenas [01-25-08]
- D2. Memorandum in Opposition to State's Motion to Amend Notice [01-31-08]
- D3. Supplemental List of Exhibits [01-31-08]
- E. Letter from Cheryl A. Rush to Beth Collis [01-10-08]
- F. Letter from Dennis V. Humphries, M.D. [01-22-08]
- J. Diagram of Floor Plan at Skilled Care Pharmacy [not dated]
- K. Letter of Support [01-30-08]
- L. Letter from Michael E. Miller, M.D. [02-26-08]

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 Mark Todd Gary was originally licensed by the State of Ohio as a pharmacist on February 15, 1991, pursuant to examination, and is currently licensed to practice pharmacy in Ohio.

(2) Mark Todd Gary did, on or about March 17, 2006, prior to dispensing Rx #5155306, fail to review the patient profile in order to conduct prospective drug utilization review, to wit: Mark Todd Gary failed to review the patient profile for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse. The physician had intended the patient, not a diabetic, to receive Reminyl 8 mg. However, the patient was inadvertently prescribed, and Mark Todd Gary dispensed, Amaryl 8 mg to be administered twice daily. The patient was administered Amaryl for a week, and subsequently died due to brain injury resulting from severe hypoglycemia. Such conduct is in violation of Rule 4729-5-20 of the Ohio Administrative Code.

(3) Mark Todd Gary did, on or about May 3, 2006, make a false statement with the purpose to mislead a public official in performing her official function, to wit: Mark Todd Gary lied to a Board of Pharmacy agent who was investigating his actions within the practice of pharmacy. When Mark Todd Gary described to a Board agent his actions, Mark Todd Gary indicated that he had sent, via a computer, a message to the "missed diagnosis queue" questioning a prescription for a patient that was not diabetic, though the prescription was for a drug used to treat diabetes. The Board of Pharmacy investigation revealed that Mark Todd Gary had not sent such a message. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

(4) Mark Todd Gary did, on or about January 13, 2006, prior to dispensing Rx #4959827, fail to review the patient profile in order to conduct prospective drug utilization review, to wit: Mark Todd Gary failed to review the patient profile for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse. Mark Todd Gary verified "hydralazine 25 mg; 1 tab po every 8 hrs prn itching" that had been entered by a technician onto the patient's profile, yet the prescription was written for hydroxyzine. Such conduct is in violation of Rule 4729-5-20 of the Ohio Administrative Code.

(5) Mark Todd Gary did, on or about January 20, 2006, prior to dispensing Rx #4979170, fail to review the patient profile in order to conduct prospective drug utilization review, to wit: Mark Todd Gary failed to review the patient profile for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse. Mark Todd Gary verified "meclizine 25 mg; 1 tab po every day" that a technician had entered onto the patient's profile, yet the prescription was written to "increase HCTZ to 25 mg 1 tab once/day, D/C HTCZ 12.5 mg once/day." Such conduct is in violation of Rule 4729-5-20 of the Ohio Administrative Code.

(6) Mark Todd Gary did, on or about February 7, 2006, prior to dispensing Rx #5033147, fail to review the patient profile in order to conduct prospective drug utilization review, to wit: Mark Todd Gary failed to review the patient profile for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse. Mark Todd Gary verified "megestrol 40 mg/1 ml oral susp; 20 ml (200 mg) po three times daily," that had been entered by a technician onto the patient's profile, which was four times the prescribed dose. Such conduct is in violation of Rule 4729-5-20 of the Ohio Administrative Code.

(7) Mark Todd Gary did, on or about February 22, 2006, prior to dispensing Rx #5081389, fail to review the patient profile in order to conduct prospective drug utilization review, to wit: Mark Todd Gary failed to review the patient profile for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse. Mark Todd Gary verified "lisinopril 10 mg; 1 tab po four times daily" that had been entered by a technician onto the patient's profile when the prescription was written for "qd." Such conduct is in violation of Rule 4729-5-20 of the Ohio Administrative Code.

(8) Mark Todd Gary did, on or about March 8, 2006, prior to dispensing Rx #5124010, fail to review the patient profile in order to conduct prospective drug utilization review, to wit: Mark Todd Gary failed to review the patient profile for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse. Mark Todd Gary verified "furosemide 40 mg tablet; inject 40 mg every day for 3 doses" that had been entered by a technician onto the patient's profile. Accordingly, the wrong dosage form was

entered onto the patient profile. Such conduct is in violation of Rule 4729-5-20 of the Ohio Administrative Code.

(9) Mark Todd Gary did, on or about March 8, 2006, prior to dispensing Rx #5123145, fail to review the patient profile in order to conduct prospective drug utilization review, to wit: Mark Todd Gary failed to review the patient profile for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse. Mark Todd Gary verified "viscous lidocaine" that had been entered by a technician onto the patient profile when the drug was prescribed for wound debridement. Such conduct is in violation of Rule 4729-5-20 of the Ohio Administrative Code.

(10) Mark Todd Gary did, on or about April 5, 2006, prior to dispensing Rx #5212024, fail to review the patient profile in order to conduct prospective drug utilization review, to wit: Mark Todd Gary failed to review the patient profile for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse. Mark Todd Gary verified "gentamicin 0.1% ointment 30 gm; place thin ribbon left eye twice daily x 5 days" that had been entered by a technician onto the patient's profile. The prescription had been written for Garamycin ophthalmic. Such conduct is in violation of Rule 4729-5-20 of the Ohio Administrative Code.

(11) Mark Todd Gary did, on or about April 7, 2006, prior to dispensing Rx #5219820, fail to review the patient profile in order to conduct prospective drug utilization review, to wit: Mark Todd Gary failed to review the patient profile for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse. Mark Todd Gary verified "lorazepam 1 mg tab; inject IM as needed for sleeplessness" that had been entered by a technician on the patient's profile when the prescriber wrote "Ativan 1 mg IM prn SZ." Such conduct is in violation of Rule 4729-5-20 of the Ohio Administrative Code.

(12) Mark Todd Gary did, on or about April 11, 2006, prior to dispensing Rx #5228504, fail to review the patient profile in order to conduct prospective drug utilization review, to wit: Mark Todd Gary failed to review the patient profile for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse. Mark Todd Gary verified "docusate sodium 100 mg cap; insert 1 cap (R)" that had been entered by a technician onto the patient's profile when the prescribed order stated to "D/C liquid Colace and restart r/s." The patient had previously been on a bisacodyl suppository. Such conduct is in violation of Rule 4729-5-20 of the Ohio Administrative Code.

(13) Mark Todd Gary did, on or about January 3, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Sudafed 60 mg, Rx #4929496, he caused another to dispense Sudafed 30 mg; 1 tab po bid x 3 days, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(14) Mark Todd Gary did, on or about January 6, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Darvocet-N 100, Rx #4940294, he caused another to label the prescription for the wrong patient, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(15) Mark Todd Gary did, on or about January 11, 2006, cause to be dispensed, and thereby misbranded, a drug pursuant to prescription without having the correct

directions for use indicated on the label affixed to the container, to wit: when dispensing Rx #4953069, Mark Todd Gary verified "metronidazole 500 mg; 1 tab po TUD" that had been entered by a technician onto the patient's profile when the prescribed frequency was ordered "TID." Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(16) Mark Todd Gary did, on or about January 13, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for hydroxyzine, Rx #4959827, he caused another to dispense hydralazine 25 mg; 1 tab po every 8 hours prn itching, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(17) Mark Todd Gary did, on or about January 16, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Coumadin 1 mg, Rx #4967324, he caused another to dispense Coumadin 6 mg, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(18) Mark Todd Gary did, on or about January 20, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for HCTZ, Rx #4979170, he caused another to label the prescription for meclizine 25 mg; 1 tab po every day, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(19) Mark Todd Gary did, on or about January 24, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Darvocet, Rx #4989245, he caused another to dispense Percocet, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(20) Mark Todd Gary did, on or about January 27, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Neosporin topical ointment, Rx #5001494, he caused another to dispense triple atb ophthalmic ointment, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(21) Mark Todd Gary did, on or about February 7, 2006, cause to be dispensed, and thereby misbranded, a drug pursuant to prescription without having the correct directions for use indicated on the label affixed to the container, to wit: when verifying Rx #5033147, Mark Todd Gary verified "megestrol 40 mg/1 ml oral susp; 20 ml (200 mg) po three times daily" that had been entered by a technician onto the patient's profile, which was four times the prescribed dose. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code and Rule 4729-5-16 of the Ohio Administrative Code.

(22) Mark Todd Gary did, on or about February 14, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Azo Yeast 400 mg, Rx #5056384, he caused another to dispense Azo Cranberry 450 mg, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(23) Mark Todd Gary did, on or about February 22, 2006, cause to be dispensed, and thereby misbranded, a drug pursuant to prescription without having the correct directions for use indicated on the label affixed to the container, to wit: when verifying Rx #5081389, Mark Todd Gary caused another to dispense lisinopril 10 mg; 1 tab po four times daily" that had been entered by a technician onto the patient's profile when the prescribed frequency was "qd," which had not been prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(24) Mark Todd Gary did, on or about March 8, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Lasix 40 mg IM qd x 3 days, Rx #5124010, he caused another to dispense furosemide 40 mg tablet; inject 40 mg every day for 3 doses, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(25) Mark Todd Gary did, on or about March 8, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for lidocaine for wound debridement, Rx #5123145, he caused another to dispense viscous lidocaine, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(26) Mark Todd Gary did, on or about March 9, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Novolog, Rx #5129597, he caused another to dispense Novolin R, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(27) Mark Todd Gary did, on or about March 9, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for K-Dur 10 mEq, Rx #5130531, he caused another to dispense Klor-Con 20 mEq, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(28) Mark Todd Gary did, on or about March 9, 2006, cause to be dispensed, and thereby misbranded, a drug pursuant to prescription without having the correct directions for use indicated on the label affixed to the container, to wit: when verifying Rx #5130306, Mark Todd Gary caused another to dispense "Depakote 500 mg; 1 tab po twice daily and 1 tab every day with 250 mg" that had been entered by a technician onto the patient's profile when the prescribed strength was "1000 mg po BID at 0800; and 4 p.m. and Depakote 1250 mg po daily at 2400". Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(29) Mark Todd Gary did, on or about March 10, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Ativan 1 mg; 1 TID, Rx #5129898, he caused another to label the drug for the wrong patient. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(30) Mark Todd Gary did, on or about March 10, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for cyclobenzaprine 20 mg, Rx #5133872, he caused another to dispense "cyclobenzaprine 10 mg, 1 tab po at bedtime" which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(31) Mark Todd Gary did, on or about March 10, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for glucosamine 150 mg po daily; chondroitin 1200 mg po daily, Rx #5133521, he caused another to dispense glucosamine 500 mg capsule; 3 capsules (1500 mg) po every day, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(32) Mark Todd Gary did, on or about March 28, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Colace 100 mg po BID, Rx #5184182, he caused another to label the drug for the wrong patient. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(33) Mark Todd Gary did, on or about March 31, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Vytorin 10/20, Rx #5199291, he caused another to dispense Vytorin 10/80, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(34) Mark Todd Gary did, on or about April 5, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Garamycin 0.1% OPH, with directions as: "os bid x 5 days," Rx #5212024, he caused another to label the drug as gentamicin 0.1% ointment 30 gm, and also to dispense topical gentamicin. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(35) Mark Todd Gary did, on or about April 6, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Lasix 80 mg po qd, Rx #5216470, he caused another to label the drug for the wrong patient. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(36) Mark Todd Gary did, on or about April 7, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received prescriptions for the following 12 drug orders, Rx #5219493, Rx #5219494, Rx #5219497, Rx #5219498, Rx #5219500, Rx #5219502, Rx #5219503, Rx #5219506, Rx #5219507, Rx #5219510, Rx #5219514, and Rx #5219516, he caused another to label the drugs for the wrong patient. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(37) Mark Todd Gary did, on or about April 7, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Ativan 1 mg IM prn SZ, Rx #5219820, he caused another to dispense lorazepam 1 mg tab; inject IM as needed for sleeplessness, which had not been specifically prescribed by the physician, nor did it indicate the correct directions for use. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(38) Mark Todd Gary did, on or about April 11, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription to "D/C Liquid Colace and restart r/s," Rx #5228504, he caused another to dispense docusate sodium 100 mg cap; insert 1 cap (R), which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(39) Mark Todd Gary did, on or about May 5, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for aspirin EC 81 mg, Rx #5305141, he caused another to dispense aspirin EC 325 mg, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(40) Mark Todd Gary did, on or about May 5, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Advair 50/250, Rx #5304015, he caused another to dispense Advair 50/500, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(41) Mark Todd Gary did, on or about May 12, 2006, cause to be dispensed, and thereby misbranded, a drug pursuant to prescription without having the correct directions for use indicated on the label affixed to the container, to wit: when verifying Rx #5325040, Mark Todd Gary did not indicate the directions for use of the drug as was prescribed by the physician. Mark Todd Gary caused another to dispense "trazadone 50 mg BID" when the prescribed frequency was "at bedtime." Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(42) Mark Todd Gary did, on or about June 8, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Zyprexa 1.25 mg; 1 po hs, Rx #5404299, he caused another to label the drug for the wrong patient. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(43) Mark Todd Gary did, on or about June 15, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Aricept 10 mg po qd, Rx #5424065, he caused another to label the drug for the wrong patient. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(44) Mark Todd Gary did, on or about May 3, 2006, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for primidone 50 mg, Rx #5296296, he caused another to dispense prednisone 50 mg, which had not been prescribed. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(45) Mark Todd Gary did, on or about May 4, 2006, misbrand a drug, to wit: when Mark Todd Gary received a prescription for nitroglycerin 0.4 mg patches, Rx #5014859, he dispensed Lidoderm patches, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(46) Mark Todd Gary did, on or about May 26, 2006, misbrand a drug, to wit: when Mark Todd Gary received a prescription for Coumadin 2.5 mg, Rx #5368014, he dispensed Coumadin 6 mg, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(47) Mark Todd Gary did, on or about May 21, 2006, misbrand a drug, to wit: when Mark Todd Gary received a prescription for acetaminophen PM, Rx #5167532, he dispensed furosemide 80 mg, which had not been specifically prescribed by the

physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(48) Mark Todd Gary did, on or about October 14, 2005, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for KCl 20 mEq po qd x 4 days, Rx #4702664, he caused another to label the drug for the wrong patient. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(49) Mark Todd Gary did, on or about October 14, 2005, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Keri Lotion, Rx #4703685, he caused another to label the drug for the wrong patient. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(50) Mark Todd Gary did, on or about September 22, 2005, misbrand a drug, to wit: when Mark Todd Gary received a prescription for Lanoxin 0.125, Rx #4478766, he dispensed Lanoxin 0.25, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(51) Mark Todd Gary did, on or about September 27, 2005, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Zocor 10 mg q day, Rx #4652234, he caused another to dispense Zocor 20 mg, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(52) Mark Todd Gary did, on or about August 29, 2005, dispense an adulterated drug, to wit: when Mark Todd Gary received a prescription for terazosin, Rx #4366945, he dispensed a drug which was past its expiration date. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(53) Mark Todd Gary did, on or about September 17, 2005, misbrand a drug, to wit: when Mark Todd Gary received a prescription for baclofen 10 mg, Rx #4623810, he dispensed baclofen 20 mg, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(54) Mark Todd Gary did, on or about September 21, 2005, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for diltiazem 60 mg q6h, Rx #4634535, he caused another to dispense diltiazem ER, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(55) Mark Todd Gary did, on or about September 13, 2005, misbrand a drug, to wit: when Mark Todd Gary received a prescription for Cipro 250 mg #2, Rx #4612262, he dispensed Cipro 500 mg #2, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(56) Mark Todd Gary did, on or about September 20, 2005, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Restoril 30 mg po q bedtime, Rx #4632135, he caused another to label the drug for the wrong patient. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(57) Mark Todd Gary did, on or about September 15, 2005, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Lamictal 150 mg, Rx #4581541, he caused another to dispense Lamictal 200 mg, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(58) Mark Todd Gary did, on or about September 15, 2005, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Detrol LA 4 mg 1 po daily, Rx #4619491, he caused another to label the drug for the wrong patient. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(59) Mark Todd Gary did, on or about September 7, 2005, cause to be misbranded a drug, to wit: when Mark Todd Gary received a prescription for Nasonex, Rx #4593975, he caused another to label the drug for the wrong patient. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(60) Mark Todd Gary did, on or about February 26, 2007, misbrand a drug, to wit: when Mark Todd Gary received a prescription for alprazolam 0.5 mg, to be taken "one tid," Rx #310817C, he dispensed the drug to be taken twice daily. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(61) Mark Todd Gary did, on or about September 10, 2007, misbrand a drug, to wit: when Mark Todd Gary received a prescription for Celebrex 200 mg, to be taken "one Bid," Rx #331377, he dispensed the drug to be taken daily. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(62) Mark Todd Gary did, on or about September 14, 2007, misbrand a drug, to wit: when Mark Todd Gary received a prescription for Buspar 15 mg "1-1.5 tid", Rx #331954, he dispensed bupropion SR. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(63) Mark Todd Gary did, on or about September 24, 2007, misbrand a drug, to wit: when Mark Todd Gary received a prescription for Lyrica 100 mg, to be taken "1 PO TID," Rx #332937C, he dispensed the drug to be taken twice daily. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(64) Mark Todd Gary did, on or about September 24, 2007, misbrand a drug, to wit: when Mark Todd Gary received a prescription for Coumadin 2 mg, Rx #332919, he dispensed Coumadin 1 mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(65) Mark Todd Gary did, on or about September 24, 2007, misbrand a drug, to wit: when Mark Todd Gary received a prescription for Rosula clarifying wash, Rx #332987, he dispensed Rosaderm clns 10/5 wash. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(66) Mark Todd Gary did, on or about October 1, 2007, misbrand a drug, to wit: when Mark Todd Gary received a prescription for amoxicillin 500 mg/5 ml "3/4 tsp po BID", Rx #333822, he dispensed amoxicillin 250 mg/5 ml "3/4 tsp po BID". Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(67) Mark Todd Gary did, on or about October 4, 2007, misbrand a drug, to wit: when Mark Todd Gary received a prescription for Cipro 500 mg, to be taken daily, Rx #334260, he dispensed the drug to be taken twice daily. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(68) Mark Todd Gary did, on or about October 18, 2007, misbrand a drug, to wit: when Mark Todd Gary received a prescription for Flexeril 10 mg, to be taken "1 po tid," Rx #335836, he dispensed the drug to be taken twice daily. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(69) Mark Todd Gary did, on or about November 1, 2007, misbrand a drug, to wit: when Mark Todd Gary refilled a prescription for Humalog pen, Rx #319809, he dispensed Humalog Mix 75/25, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(70) Mark Todd Gary did, on or about November 9, 2007, misbrand a drug, to wit: when Mark Todd Gary received a prescription for metoprolol 25 mg take "0.5 tablet by mouth every day", Rx #338307, he labeled the prescription with the directions to "take one tablet by mouth daily", which had not been specifically prescribed the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes 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 (70) of the Findings of Fact constitute being guilty of 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 paragraphs (2) and (4) through (12) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any rule adopted by the Board 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 suspends indefinitely the pharmacist identification card, No. 03-3-18639, held by Mark Todd Gary and such suspension is effective as of the date of the mailing of this Order.

(A) Mark Todd Gary, 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.

(B) Mark Todd Gary, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his license to practice (pocket ID card) and registration (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.

Further, after twenty-four months from the effective date of this Order, the Board will consider any petition filed by Mark Todd Gary for a hearing, pursuant to Ohio Revised Code Chapter 119., for reinstatement. The Board will only consider reinstatement of the license to practice pharmacy in Ohio if the following conditions have been met:

(1) Mark Todd Gary must, six months immediately preceding his appearance at the reinstatement petition hearing, work as a pharmacy intern for 1,000 hours. During this time, Mark Todd Gary may not work more than 40 hours per week.

(2) The responsible pharmacist must provide, to the Board, a performance evaluation of the 1,000 hours worked, which must include documentation of any errors.

(3) Mark Todd Gary must take and pass both the Multistate Pharmacy Jurisprudence Examination (MPJE), or an equivalent examination acceptable to the Board and the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination approved by the Board during the six months immediately preceding his appearance at the reinstatement petition hearing.

(4) Mark Todd Gary must show evidence that he has recognized his problems that caused his bad pharmacy practice, and what steps he has taken to correct the problems to restore his competency to practice pharmacy, and that he is in fact competent to practice pharmacy.

(5) Inasmuch as Mark Todd Gary has testified and/or otherwise agreed that there should be restrictions placed on his pharmacy practice, Mark Todd Gary must, at his reinstatement hearing, identify such restrictions that should be in place so as to further ensure his competency to practice pharmacy.

Upon such time as the Board may consider reinstatement, Mark Todd Gary will be afforded a Chapter 119. hearing. At such time, the Board may consider reinstatement with or without restrictions and/or conditions as the Board deems appropriate under the circumstances.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-8/Nay-0).

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.

MARK TODD GARY, R.PH.

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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 10, 2008**

WTW/lf

By: _____

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

CERTIFIED MAIL/Return Receipt
7004 2510 0006 9804 3489

c: Sally Ann Steuk, Assistant Attorney General
Elizabeth Y. Collis, Attorney for Respondent; Collis, Smiles & Collis, LLC; 1650 Lake Shore Drive, Suite 225; Columbus, Ohio 43204