

NOTE: The following Minutes are provided for informational purposes only.
If you would like to obtain an official copy of these Minutes, please contact the Ohio Board of Pharmacy at 614/466-4143 for instructions and fee.

Minutes Of The Meeting

Ohio State Board of Pharmacy
Columbus, Ohio
July 14, 15, 16, 1997

MONDAY, JULY 14, 1997

8:13 a.m. ROLL CALL

The State Board of Pharmacy convened in Room 1914, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Amonte B. Littlejohn, R.Ph. (President); Joseph J. Maslak, R.Ph. (Vice-President); Diane Adelman, R.Ph.; Paul Lamping, R.Ph.; Suzanne Neuber, R.Ph.; and Ruth Plant, R.Ph.

The Board was joined by Mary Hollern, Assistant Attorney General; David Rowland, Legal Affairs Administrator; and Robert Cole, Compliance Supervisor.

Mrs. Plant moved that the Board go into Executive Session for the purpose of conferring with the Assistant Attorney General regarding pending and imminent court matters. The motion was seconded by Mr. Lamping and a roll call vote was conducted by President Littlejohn as follows: Adelman-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, and Plant-Yes.

8:16 a.m.

Board member Nicholas Repke arrived and joined the meeting.

8:50 a.m.

RES. 98-001

The Executive Session was concluded and the meeting opened to the public. Mr. Lamping moved that the Board not approve the proposed settlement in the matter of Elizabeth Murcia and that the adjudication hearing be held as scheduled. The motion was seconded by Mr. Repke and approved (Aye-6/Nay-0).

William T. Winsley, Assistant Executive Director, distributed copies of H.B. 532 as it was introduced for the Board's information and discussion. Mr. Winsley also reported on the NAPLEX examination, problems being experienced by candidates in scheduling an appointment with Sylvan Testing Centers, the extension of the July window by the National Association of Boards of Pharmacy, and the Board's Jurisprudence examination.

9:00 a.m.

The meeting was recessed for ten minutes.

9:13 a.m.

The Board reconvened in Room 1914 and the Board was joined by representatives of the Pharmacists Rehabilitation Organization, Inc. (PRO) - Nick Kallis, R.Ph. and Wayne Miller, R.Ph. to discuss issues concerning impaired pharmacists. A copy of the new contract being used by PRO was distributed to Board members for their review and comments. General discussion was held regarding impaired professionals and the Board's responsibility to protect the public.

9:55 a.m.

Discussion was concluded and the meeting recessed so that the Board could travel to Studio II on the fourth floor to meet with representatives of the corporations operating chain pharmacies in Ohio. Mr. Winsley discussed the State Board News article on patient counseling and the consequences when it does not occur. Copies of the amended rules on transferring prescription copies, the confidentiality of patient information, and electronic prescriptions were distributed for discussion. Pertinent sections of the rules were also discussed with the meeting participants.

12:00 p.m.

The Board meeting was recessed until 1:00 p.m.

1:15 p.m.

Board members, representatives of the corporations operating chain pharmacies in Ohio, and guests reconvened in Studio II to meet with representatives of the Ohio Corporation for Health Care Information (OCHI). OCHI representatives presented information on the status of OCHI-Net and demonstrated the various screen images in order to provide the attendees with a feel for the functionality of the system.

2:15 p.m.

The presentation was completed and the Board reconvened in Room 1914 to continue their business meeting.

Dr. Richard Wuest of the University of Cincinnati College of Pharmacy joined the Board. Dr. Wuest appeared on behalf of the Health Resource Publishing Company, St. Louis, Missouri and presented information regarding "The Health Resource Newsletter" marketing system for community pharmacies. The system consists of a laser printer and central processing unit that is on-line with the publishing company and is also connected to the pharmacy's computer with a simple 'Y' cable. Dr. Wuest assured the Board that the system does not permit the Health Resource Publishing Company to collect confidential patient information and that the on-line connection with the publisher is only for the purpose of collecting statistics and downloading new drug information and coupons.

3:10 p.m.

The presentation was completed and the Board recessed for twenty minutes.

3:30 p.m.

RES. 98-002

The Board reconvened for the purpose of continuing their business meeting. Mrs. Neuber moved that the Board approve payment of the National Association of State Controlled Substance Authorities membership dues for 1997-1998 (\$150.00). The motion was seconded by Mr. Maslak and approved (Aye-7/Nay-0).

RES. 98-003

Mr. Maslak then moved that the Board rescind Resolutions 88-232 and 89-018 and that the fees payable to the Board under Section 4729.15(A) of the Revised Code be set as follows:

- (1) For applying to take the licensure exam for initial registration, \$165.00;
- (2) For applying to take only the State Jurisprudence examination, \$165.00;
- (3) For applying to take only the NAPLEX examination, \$110.00.

The motion was seconded by Mrs. Plant and approved (Aye-4/Nay-2/Abstain-1 [Repke]).

RES. 98-004

The Board then considered a request from the Cincinnati Police Division that they be permitted to place a link on their "Pharmaceutical Diversion Unit" World Wide Web home page site to the Board of Pharmacy's. Following discussion, the Board directed staff to inform WebMaster Sergeant Tom D. Smith that the Board approves the request.

RES. 98-005 The Assistant Executive Director, William Winsley, reported that the following settlement was entered into by the Board following the signatures of the Board President and Assistant Attorney General:

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-960212-038)

In the Matter of:

MARK JEFFREY SCHIRTZINGER, R.Ph.
324 Kinsey Road
Xenia, Ohio 45385
(R.Ph. No. 03-3-17133)

This Settlement Agreement is entered into by and between Mark Jeffrey Schirtzinger, R.Ph. and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Mark Jeffrey Schirtzinger enters into this Agreement being fully informed of his rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudication hearing on the issues contained herein.

Mark Jeffrey Schirtzinger is knowingly and voluntarily acknowledging that, in order to settle the charges that have been filed by the Board against him, and in order to obviate the need to conduct an administrative hearing to consider the disciplinary sanctions against his license to practice pharmacy in the state of Ohio, Mark Jeffrey Schirtzinger enters into this Agreement on the basis of the following stipulations, admissions, and understandings:

- (A) The Ohio State Board of Pharmacy is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, place on probation, refuse to grant or renew an identification card, or impose a monetary penalty on the license holder for violation of any of the enumerated grounds.
- (B) On or about February 12, 1996, and again on August 12, 1996, pursuant to Chapter 119. of the Ohio Revised Code, Mark Jeffrey Schirtzinger was notified of the allegations or charges against him, his right to a hearing, his rights in such hearing, and his right to submit contentions in writing. Further, in accordance with Chapter 119. of the Ohio Revised Code, a hearing was requested and scheduled for April 23, 1997.
- (C) Mark Jeffrey Schirtzinger stipulates to the allegations stated in the Notice of Opportunity for Hearing letter dated February 12, 1996, and the Summary Suspension Order/Notice of Opportunity for Hearing letter dated August 12, 1996; and the Board herein adjudicates the same:
 - (1) Records of the Board of Pharmacy indicate that Mark Jeffrey Schirtzinger was originally licensed in the state of Ohio on October 23, 1987, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. On August 12, 1996, Mark Jeffrey Schirtzinger's license was suspended in accordance with Section 3719.121(B) of the Ohio Revised Code.
 - (2) Mark Jeffrey Schirtzinger did, on or about September 3, 1995, operate a vehicle in the state of Ohio while under the influence of alcohol and/or a drug of abuse, to wit: Mark Jeffrey Schirtzinger was observed by the Xenia Police Department to be driving while under the influence of alcohol and/or drugs at 6:30 a.m. Such conduct is in violation of Section 4511.19 of the Ohio Revised Code.
 - (3) Mark Jeffrey Schirtzinger did, on or about September 3, 1995, possess a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Mark Jeffrey Schirtzinger possessed the following controlled substances outside the confines of a pharmacy and not for a legitimate medical purpose: 12 tablets of Diazepam 5mg, ~~5 tablets of Didrex 50mg,~~ (MS) and 15 capsules of Ionamin 30mg. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
 - (4) Mark Jeffrey Schirtzinger did, from June 1, 1995, through October 5, 1995, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the

property of Revco #478, 595 Ledbetter Road, Xenia, Ohio, beyond the express or implied consent of Revco, to wit: while practicing pharmacy Mark Jeffrey Schirtzinger stole 28 capsules of Ionamin 30mg, 100 tablets of Diazepam 5mg, 15 tablets of Diazepam 10mg, ~~5 tablets of Didrex 50mg, (MS)~~ and 100 tablets of Zoloft 100mg. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (5) Mark Jeffrey Schirtzinger did, on or about August 3, 1996, possess a dangerous drug when the conduct was not in accordance with Chapters 3719., 4729, and 4731. of the Ohio Revised Code, to wit: within one hour after practicing pharmacy, Mark Jeffrey Schirtzinger possessed Carisoprodol for personal abuse and without a prescription. Such conduct is in violation of Section 4729.51(C)(3) of the Ohio Revised Code.
- (6) Mark Jeffrey Schirtzinger did, on or about August 3, 1996, operate a motor vehicle while under the influence of alcohol and/or drugs of abuse, to wit: Mark Jeffrey Schirtzinger was arrested by the Xenia Police Department after having been observed operating his car while impaired within one hour after practicing pharmacy. Such conduct is in violation of Section 4511.19 of the Ohio Revised Code.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Mark Jeffrey Schirtzinger knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) The removal of the Summary Suspension Order issued August 12, 1996, pursuant to Section 3719.121(B) of the Ohio Revised Code.
- (B) The indefinite suspension of his pharmacist identification card, No. 03-3-17133.
 - (1) Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Mark Jeffrey Schirtzinger may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
 - (2) Division (B) of Section 4729.16 of the Revised Code provides that: "Any individual whose identification card is revoked, suspended, or refused, shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of the notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.
- (C) September 1, 1997, or thereafter, the Board will consider any petition filed by Mark Jeffrey Schirtzinger for a hearing, pursuant to Revised Code Chapter 119. of the Ohio Revised Code, upon the question of the reinstatement of his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
 - (1) Mark Jeffrey Schirtzinger must enter into a new contract with a limited treatment provider acceptable to the Board for a period of not less than five years from the effective date of this Agreement and, upon signing, submit a copy of the contract to the Board office. The contract must provide:
 - (a) random, **observed** urine drug screens shall be conducted at least every three months. The urine drug screens must report testing for alcohol; and must also report testing for creatinine or specific gravity of the sample as the dilutional standard;
 - (b) regular attendance, at least three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meetings, and at meetings of a professional support group, is required during outpatient treatment and/or during aftercare; and
 - (c) the program shall immediately report to the Board of Pharmacy any positive urine screens and/or other violations of the contract.

- (2) Mark Jeffrey Schirtzinger upon petitioning the Board for reinstatement, must provide evidence of at least one year of documented sobriety including:
- (a) the results of an examination of his chemical dependency status including an actionology consultation and proposed treatment plan;
 - (b) any testimonials from others;
 - (c) all contract(s) with treatment providers and written documentation from the treatment provider(s) regarding compliance with the program(s);
 - (d) copies of all urine screen reports; and
 - (e) original continuing pharmacy education certificates documenting 4.5 C.E.U.s in compliance with Chapter 4729-7 of the Ohio Administrative Code for the three-year period prior to the date of the reinstatement petition hearing. Two hours or 0.2 C.E.U.s of the 4.5 requirement must be approved Jurisprudence courses in accordance with Rule 4729-7-02 of the Ohio Administrative Code.

If, in the judgment of the Board, Mark Jeffrey Schirtzinger appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

Mark Jeffrey Schirtzinger acknowledges that he has had an opportunity to ask questions concerning the terms of this agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Mark Jeffrey Schirtzinger waives any and all claims or causes of action he may have against the State of Ohio or the Board, and its members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement.

In the event the Board, in its discretion, does not approve this Agreement, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. Mark Jeffrey Schirtzinger agrees that should the Board reject this Agreement and if this case proceeds to hearing, he will assert no claim that the Board was prejudiced by its review and discussion of this Agreement or of any information relating thereto.

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

<u>/s/ Mark Jeffrey Schirtzinger</u>	<u>/d/ 7-1-97</u>
Mark Jeffrey Schirtzinger, Respondent	Date of Signature

<u>/s/ Douglas Graff</u>	<u>/d/ 7/2/97</u>
Douglas E. Graff, Attorney for Respondent	Date of Signature

<u>/s/ Suzanne L. Neuber</u>	<u>/d/ 7/13/97</u>
Suzanne L. Neuber, President, Ohio State Board of Pharmacy	Date of Signature

<u>/s/ Mary L. Hollern</u>	<u>/d/ 7/14/97</u>
Mary L. Hollern, Ohio Assistant Attorney General	Date of Signature

4:00 p.m. The meeting was recessed until Tuesday, July 15, 1997, at 8:00 a.m.

TUESDAY, JULY 15, 1997

8:37 a.m. ROLL CALL

The following members of the State Board of Pharmacy reconvened in Room 1914, 77 South High Street, Columbus, Ohio:

Amonte B. Littlejohn, R.Ph. (President); Diane Adelman, R.Ph.; Paul Lamping, R.Ph.; Suzanne Neuber, R.Ph.; and Ruth Plant, R.Ph.

Due to the fact that a quorum was not present to conduct a vote, staff discussed administrative reports and correspondence. Board member Ruth Plant discussed her concern with the federal legislation regarding compounding that is pending before Congress.

The Executive Director reported that he and representatives of several other pharmacy boards met with Doug Stevens, Vice-President, and Simon Eisenberg, Director of Provider Relations, for PCS Health Systems, Inc. on Wednesday, July 9, 1997. The purpose of the meeting was to discuss problems with their Preferred Drug Program (therapeutic drug switch) as originally instituted by the company. The Preferred Drug Program procedures that violated state laws were changed and the current program is now believed to be in compliance with all state laws and rules. Mr. Stevens, in response to questioning, indicated that a new program would replace the PDP program by the end of 1997 or 1998. The Board representatives were assured that PCS would be consulting with the boards prior to implementing the new program in their state.

RES. 98-006 The Executive Director then reported that a meeting was held on July 8, 1997 in the Board offices with C.E. Verifier representatives John Hondros and Ron Hill as well as Ohio Pharmacist Association representatives Steve Mueller and Rod Moon. The purpose of the meeting was to explore the possibility of developing continuing pharmacy education programs that would be made available on the World Wide Web. It was decided that planning should proceed with all parties since such programs would be readily accessible to all Ohio Registered Pharmacists at their convenience.

8:54 a.m.

Joseph Maslak, R.Ph. (Vice-President) arrived and joined the meeting. The Board continued their review of administrative matters and reports.

9:18 a.m.

John Hanna, R.Ph. arrived and joined the meeting. The Board continued their review of administrative matters and reports. Also discussed were questions regarding the Minutes of the June meeting as drafted. No vote was taken, however, since Mr. Repke was not present and had not had an opportunity to ask any questions he may have.

RES. 98-007 Staff submitted the following request for a waiver pursuant to paragraph (A) of Ohio Administrative Code Rule 4729-5-11:

Brown Count Hospital (02-0033100)
BCGH Diversified Services (02-0936750)

Following discussion, Mrs. Plant moved that R.Ph. David S. Cornwell (03-3-22600) be granted the waiver for a period not to exceed one year. The motion was seconded by Mrs. Neuber and approved (Aye-6/Nay-0).

10:10 a.m.

William T. Winsley, Assistant Executive Director, joined the Board for the purpose of reviewing the recommendations of the 1997 Ad Hoc Advisory Committee on Rule Review.

11:45 a.m.

The Board recessed for lunch.

1:00 p.m.

RES. 98-008 Nicholas Repke, Public Member, arrived and joined the Board. The Board reconvened in Room 1919, 77 South High Street, for the purpose of meeting with the following candidates for licensure by reciprocity:

ABELL, REKHA	03-3-22620	WISCONSIN
ABELL, STEPHEN P.	03-3-22621	WISCONSIN
AKERS, PAIGE S.	03-3-22632	KENTUCKY
ATNAFE-ESKENDER, SABA	03-3-22630	GEORGIA
BUTLER, DAWN E.	03-3-22626	KENTUCKY
COX, RACHEL A.	03-3-22631	MARYLAND
ESSEX SCHAPER, HEATHER K	03-3-22597	GEORGIA
FAROH, JR., PHILIP J.	03-3-22191	INDIANA
FORDING, MICHAEL A.	03-3-22618	PENNSYLVANIA
FRANCIS, MICHAEL D.	03-3-22598	PENNSYLVANIA
FRANK, SYLVAN G.	03-3-22253	MICHIGAN
HALE, SUSAN L.	03-3-22477	TENNESSEE
HAMLIN, TERRY R.	03-3-22298	VIRGINIA
HANSON, NORMAN D.	03-3-22338	IOWA
HEYING, KIMBERLY K.	03-3-22617	IOWA
HUTSON, TAMARA K.	03-3-22629	INDIANA
KAHLE, CHRISTINE J.	03-3-22616	MINNESOTA
LEISURE, MELISSA Z.	03-3-22633	WEST VIRGINIA
LUCAS, ROBERT T.	03-3-22491	PENNSYLVANIA
MILES, MICHAEL V.	03-3-22619	OKLAHOMA
MILLER, JOHN A.	03-3-22627	WEST VIRGINIA
PASS, STEVEN E.	03-3-22466	KENTUCKY
POTCOVA, CAROLINE A.	03-3-22625	MICHIGAN
ROACH, MARY A.	03-3-22634	MARYLAND
RYAN, MARY J.	03-3-22378	ARIZONA
SCHAFFER, MARY B.	03-3-22623	INDIANA
VITHALANI, VIRGINIA M.	03-3-22377	OKLAHOMA

1:35 p.m.

Mr. Repke moved that the candidates be approved and their licenses to practice pharmacy in Ohio be issued. The motion was seconded by Mrs. Adelman and approved (Aye-7/Nay-0). The Board excused themselves from the reciprocity hearing and reconvened in Room 1914 for the purpose of continuing their review of the recommendations of the 1997 Ad Hoc Advisory Committee on Rule Review. Staff was instructed to revise the proposed amendments pursuant to Board member recommendations and present the new drafts for further consideration at the August Board meeting.

The Board then began a discussion of the Memorandum received from the Ohio Department of Human Services Bureau of Medicaid Policy regarding "clearance review" of Ohio Administrative Code Chapter 5101:3-9 pursuant to Substitute House Bill 473. Due to time constraints, further consideration was deferred until Wednesday morning.

4:50 p.m. The Board members recessed the business meeting until Wednesday, July 16, 1997, at 9:00 a.m.

WEDNESDAY, JULY 16, 1997

9:00 a.m. ROLL CALL

The following members of the State Board of Pharmacy reconvened in Room 1914, 77 South High Street, Columbus, Ohio:

Amonte B. Littlejohn, R.Ph. (President); Joseph J. Maslak, R.Ph. (Vice-President); Diane Adelman, R.Ph.; Paul Lamping, R.Ph.; Suzanne Neuber, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

Mr. Lamping moved that the Board go into Executive Session for the purpose of considering the investigation of complaints against licensees and registrants. The motion was seconded by Mrs. Neuber and a roll call vote was conducted by President Littlejohn as follows: Adelman-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

9:36 a.m.

Board Member John Hanna, R.Ph. arrived and joined the meeting.

9:58 a.m.

The Executive Session was concluded and the meeting opened to the public.

RES. 98-009 David Rowland, Legal Affairs Administrator, joined the Board and presented drafts of three Cease and Desist Orders for consideration by the Board. Following discussion and consideration, Mrs. Neuber moved that the Board issue the following Cease and Desist Orders:

Wholesale Alliance, L.L.C.

4650 Industrial Drive
Springfield, IL 62703

To Whom It May Concern:

It has come to the Board's attention that Wholesale Alliance, L.L.C., operating as Pharmacy First Network, is soliciting Ohio pharmacies to enter into contracts which require the participating pharmacies to transmit confidential information to the company. A copy of the "membership agreement" which your company has distributed to an Ohio pharmacy is enclosed herewith.

You are hereby advised that Section 3719.13 of the Ohio Revised Code states as follows:

Prescriptions, orders, and records, required by Chapter 3719. of the Revised Code, and stocks of dangerous drugs and controlled substances, shall be open for inspection only to federal, state, county, and municipal officers, and employees of the state board of pharmacy whose duty it is to enforce the laws of this state or of the United States relating to controlled substances. Such prescriptions, orders, records, and stocks shall be open for inspection by employees of the state medical board for purposes of enforcing Chapter 4731. of the Revised Code. No person having knowledge of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party.

Further, Rule 4729-5-29 of the Ohio Administrative Code states in pertinent part as follows:

(A) Records of dispensing or administering of drugs are not a public record. A person having custody of, or access to, such records shall not divulge the contents thereof, or provide a copy thereof, to anyone except:

- (1) The patient for whom the prescription or medication order was issued.
- (2) The practitioner who issued the prescription or medication order.
- (3) Certified/licensed health care personnel who are responsible for the care of the patient.
- (4) A member, inspector, agent, or investigator of the board of pharmacy or any federal, state, county, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a specific investigation involving a designated person or drug.
- (5) An agent of the state medical board when enforcing Chapter 4731. of the Revised Code.
- (6) An agency of government charged with the responsibility of providing medical care for the patient upon a written request by an authorized representative of the agency requesting such information.
- (7) An agent of a medical insurance company who provides prescription insurance coverage to the patient upon authorization and proof of insurance by the patient or proof of payment by the insurance company for those medications whose information is requested.
- (8) Any person, other than those listed in paragraphs (A)(1) to (A)(6) of this rule, only when the patient has given consent for such disclosure in writing, except where a patient requiring medication is unable to deliver a written consent to the necessary disclosure. Any consent must be signed by the patient and dated. Any consent for disclosure is valid until rescinded by the patient. In an emergency, the pharmacist may disclose the prescription information when, in the professional judgment of the pharmacist, it is deemed to be in the best interest of the patient. A pharmacist making an oral disclosure in an emergency situation must prepare a written memorandum showing the patient's name, the date and time the disclosure was made, the nature of the emergency, and the names of the individuals by whom and to whom the information was disclosed.

(B) . . .

You are further advised that a violation of Section 3719.13 of the Ohio Revised Code is a misdemeanor of the third degree in the state of Ohio, punishable by a fine up to \$3,000. and incarceration up to 90 days. Entering into contracts with pharmacies to receive confidential information could be regarded as complicity to the dissemination of the information from those pharmacies. The State Board of Pharmacy regards the improper dissemination of confidential patient records as a serious offense, and will not hesitate to pursue violators.

WHEREFORE, Wholesale Alliance, L.L.C. dba Pharmacy First Network, is hereby notified to CEASE engaging in conduct which aids and abets the violation of Ohio's patient confidentiality statutes, and DESIST from any violations of Ohio law.

BY ORDER OF THE STATE BOARD OF PHARMACY

NeuCare
175 Railroad Avenue
Ridgefield, NJ 07657-9938

To Whom It May Concern:

It has come to the Board's attention that RX Data, Inc., operating as NeuCare, Inc., is soliciting Ohio pharmacies to enter into contracts which require the participating pharmacies to transmit confidential information to the company. A copy of the "membership agreement" which your company has distributed to an Ohio pharmacy is enclosed herewith.

You are hereby advised that Section 3719.13 of the Ohio Revised Code states as follows:

Prescriptions, orders, and records, required by Chapter 3719. of the Revised Code, and stocks of dangerous drugs and controlled substances, shall be open for inspection only to federal, state, county, and municipal officers, and employees of the state board of pharmacy whose duty it is to enforce the laws of this state or of the United States relating to controlled substances. Such prescriptions, orders, records, and stocks shall be open for inspection by employees of the state medical board for purposes of enforcing Chapter 4731. of the Revised Code. No person having knowledge of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party.

Further, Rule 4729-5-29 of the Ohio Administrative Code states in pertinent part as follows:

(A) Records of dispensing or administering of drugs are not a public record. A person having custody of, or access to, such records shall not divulge the contents thereof, or provide a copy thereof, to anyone except:

- (1) The patient for whom the prescription or medication order was issued.
- (2) The practitioner who issued the prescription or medication order.
- (3) Certified/licensed health care personnel who are responsible for the care of the patient.
- (4) A member, inspector, agent, or investigator of the board of pharmacy or any federal, state, county, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a specific investigation involving a designated person or drug.
- (5) An agent of the state medical board when enforcing Chapter 4731. of the Revised Code.
- (6) An agency of government charged with the responsibility of providing medical care for the patient upon a written request by an authorized representative of the agency requesting such information.

(7) An agent of a medical insurance company who provides prescription insurance coverage to the patient upon authorization and proof of insurance by the patient or proof of payment by the insurance company for those medications whose information is requested.

(8) Any person, other than those listed in paragraphs (A)(1) to (A)(6) of this rule, only when the patient has given consent for such disclosure in writing, except where a patient requiring medication is unable to deliver a written consent to the necessary disclosure. Any consent must be signed by the patient and dated. Any consent for disclosure is valid until rescinded by the patient. In an emergency, the pharmacist may disclose the prescription information when, in the professional judgment of the pharmacist, it is deemed to be in the best interest of the patient. A pharmacist making an oral disclosure in an emergency situation must prepare a written memorandum showing the patient's name, the date and time the disclosure was made, the nature of the emergency, and the names of the individuals by whom and to whom the information was disclosed.

(B) . . .

You are further advised that a violation of Section 3719.13 of the Ohio Revised Code is a misdemeanor of the third degree in the state of Ohio, punishable by a fine up to \$3,000. and incarceration up to 90 days. Entering into contracts with pharmacies to receive confidential information could be regarded as complicity to the dissemination of the information from those pharmacies. The State Board of Pharmacy regards the improper dissemination of confidential patient records as a serious offense, and will not hesitate to pursue violators.

WHEREFORE, RX Data, Inc., dba NeuCare, Inc., is hereby notified to CEASE engaging in conduct which aids and abets the violation of Ohio's patient confidentiality statutes, and DESIST from any violations of Ohio law.

BY ORDER OF THE STATE BOARD OF PHARMACY

The motion was seconded by Mr. Lamping and approved (Aye-6/Nay-0/Abstain-1[Hanna]).

RES. 98-010 Mr. Lamping moved that the Board issue the following Cease and Desist Order:

Magic Herb
8513 N. Rockwell Ave.
Oklahoma City, OK 73132-1521

To Whom it may concern:

It has come to the attention of the Board that Magic Herb markets the product "Magic Herb" as a "diet plus formula with Chromium Picolinate" throughout the state of Ohio. Copies of literature disbursed in this state are attached hereto for your reference. According to the literature, the product's labeling fails to indicate the quantity of ephedrine in each dosage unit, and it fails in several other respects as set forth in the law restated below.

You are hereby advised that, pursuant to Section 3719.41 of the Ohio Revised Code, ephedrine, except as provided in division (K) of section 3719.44 of the Revised Code is a Schedule V Controlled Substance. Section 3719.44(K)(2)(a) states as follows:

A product containing ephedrine shall not be considered a controlled substance if the product is a food product or dietary supplement that meets all of the following criteria:

(I) it contains, per dosage unit or serving, not more than the lesser of twenty-five milligrams of ephedrine alkaloids or the maximum amount of ephedrine alkaloids provided in applicable regulations adopted by the United States Food and Drug Administration, and no other controlled substance.

(II) it contains no hydrochloride or sulfate salts of ephedrine alkaloids.

(III) it is packaged with a prominent label securely affixed to each package that states all of the following: the amount in milligrams of ephedrine in a serving or dosage unit; the amount of the food product or dietary supplement that constitutes a serving or dosage unit; that the maximum recommended dosage of ephedrine for a healthy adult human is the lesser of one hundred milligrams in a twenty-four-hour period for not more than twelve weeks or the maximum recommended dosage or period of use provided in applicable regulations adopted by the United States Food and Drug Administration; and that improper use of the product may be hazardous to a person's health.

Your product fails to meet the criteria for exemption from controlled substance status in both labeling and content. Therefore, "Magic Herb" is a Schedule V Controlled Substance in the state of Ohio and may not be marketed or sold in the manner and substance in which you now market the product. You are hereby admonished to CEASE advertising this product as available for sale by anyone other than a registered pharmacist in a licensed pharmacy; and, in absence of a properly labeled container, you must CEASE selling this product to any person or entity within this state except to properly licensed wholesale or terminal distributors. Further, you must DESIST from any further violations of Ohio's controlled substances laws and regulations.

BY ORDER OF THE STATE BOARD OF PHARMACY

The motion was seconded by Mrs. Plant and approved (Aye-6/Nay-0/Abstain-1[Hanna]).

RES. 98-011 The next business item considered by the Board was legislative language drafted by staff to amend Ohio Revised Code Section 4729.13 regarding the renewal of licenses to practice pharmacy which have lapsed for more than three years. Following discussion, Mrs. Neuber moved that the Board approve the following language to amend Ohio Revised Code Section 4729.13 and that an attempt be made to have it incorporated into H.B. 532.

Section 4729.13 Examination for registration after three-year lapse of identification card.

If a registered pharmacist fails to make application to the state board of pharmacy for a renewal identification card within a period of three years from the expiration of his identification card, he must PAY THE FEE DESIGNATED UNDER DIVISION (F) OF SECTION 4729.15 OF THE REVISED CODE AND pass an examination for registration; except that a person who has been registered under the laws of this state and after the expiration of his registration, MEETS ONE OF THE FOLLOWING PROVISIONS:

- (A) ~~has~~ HAS continually practiced pharmacy in another state under a certificate issued by the authority of such state, OR
- (B) CAN EXHIBIT SUCH QUALIFICATIONS AND EXPERIENCE SUFFICIENT FOR THE BOARD TO DETERMINE THE PERSON SUBSTANTIALLY MEETS THE REQUIREMENT OF DIVISION (A) OF THIS SECTION.

may obtain a renewal identification card upon payment to the executive director of the board the fee designated under division (F) of section 4729.15 of the Revised Code.

The motion was seconded by Mrs. Plant and approved (Aye-7/Nay-0).

Mrs. Plant moved that the Minutes of the June 16, 17, 18, 1997 meeting be approved as amended. The motion was seconded by Mrs. Neuber and approved (Aye-7/Nay-0).

RES. 98-012 Staff presented a draft of a Compliance Bulletin regarding the transfer of prescriptions and amended Ohio Administrative Code Rule 4729-5-24. Following consideration and amendments, the Board directed that the following Compliance Bulletin be mailed to all Ohio Registered Pharmacists:

Ohio Administrative Code Rule 4729-5-24 allows for the transfer of prescription information between pharmacies. As stated in paragraph (A) of this rule "A pharmacist may transfer a copy of a prescription." Over the last year the Board has received numerous complaints from both pharmacists and the public outlining the refusal of certain pharmacies to transfer prescription information to another pharmacy when valid refills remain for that prescription. The Board has always stated that the original prescription record is maintained by the pharmacy dispensing the drug but that the prescription information is the property of the patient and if the patient requests a transfer of their prescription information, the pharmacist should honor that request.

Due to the increased frequency of refusal, the Board has amended Rule 4729-5-24 to mandate the transfer of prescription information upon the request of the patient. The new language, EFFECTIVE JULY 1, 1997, is found in paragraph (D) of the prescription copy rule and reads as follows:

- (D) *Information on a prescription is the property of the patient and is intended to authorize the dispensing of a specific amount of medication for use by the patient. Original copies of prescriptions shall be maintained by pharmacies for the purpose of documenting the dispensing of drugs to a particular patient.*
 - (1) *In the event that the pharmacy is not able to provide the medication when needed by the patient pursuant to an authorized refill, the pharmacist shall, upon the request of the patient, transfer the prescription information to the pharmacy designated by the patient.*
 - (2) *No pharmacy shall refuse to transfer information about a previously dispensed prescription to another pharmacy when requested by the patient. Prescription information shall be transferred in accordance with this rule as soon as possible in order to assure that the patient's drug therapy is not interrupted.*

Please note: This rule allows the transfer of prescription information after the initial dispensing. If the prescription was never dispensed, then the pharmacist may not transfer the prescription information. The original prescription may be returned to the patient unless it contains another prescription that has been dispensed.

Since July 1994, the Board has licensed out-of-state pharmacies that have sent prescription medication directly to patients that live within Ohio's borders. Thus, these pharmacies are bound by this rule the same as in-state providers.

If you are refused a prescription copy transfer, after the patient has requested the transfer, please advise the refusing pharmacy of this rule change and fax or send them a copy of this bulletin. If refusal continues, contact the Board office at 614/466-4143.

Remember, the *patient* must be requesting the transfer, not just the pharmacy. Also, this rule does not mandate insurance payment at your pharmacy for the prescription. Board of Pharmacy laws and rules do not cover insurance payment.

RES. 98-013 The Board then noted the following concerns regarding the Ohio Department of Human Services Proposed Amended rules:

OAC 5101:3-9-02 (F)(4)(d) - The new language imposes an undue burden on practicing pharmacists in that very few pharmacists have access to the information required to make a valid professional judgment and determine whether or not drugs are being used for Non-FDA approved indications. Prescribers are not required and do not routinely provide the dispensing pharmacist with their diagnosis of the condition that they are treating.

OAC 5101:3-9-06 (A)(2) - The new language facilitates and legitimizes fraudulent billing practices on the part of providers.

OAC 5101:3-9-09 (A)(2) - Physicians, dentists, and podiatrists are not the only individuals authorized to prescribe drugs in the course of their professional practice. The Board of Pharmacy recommends that the term "prescriber" be used.

RES. 98-014 Nancy Little, Licensing Administrator and Information Systems Manager, presented drafts of computer policies for consideration by the Board. Mrs. Neuber moved that the policies be adopted as amended. The motion was seconded by Mr. Lamping and approved (Aye-7/Nay-0).

OHIO BOARD OF PHARMACY INFORMATION SYSTEMS
P O L I C Y

BOP-IS-002
(7/14/97)

SOFTWARE COPIES AND COPYRIGHTS

PURPOSE:

The purpose of this Policy is to provide information and define how the Board of Pharmacy will respond to software copying and copyright regulations violations by Board employees.

REFERENCE:

This is an adopted policy based on OPP-005, effective February 14, 1997, by the Dept. of Administrative Services, Division of Computer Services.

BACKGROUND:

Under the Federal Copyright Act (Title 17 of the United States Code), it is illegal to make or distribute copies of copyrighted material without authorization. Further, anyone involved in illegal reproduction of software may be subject to civil damages and criminal penalties, including fines and imprisonment.

POLICY:

Most software is copyrighted and protected under the Federal Copyright Act. Many software packages may also have patent, trade secret, trademark, and other intellectual rights associated with them that

are protected by other Federal and state law. Respect for intellectual property rights requires a certain degree of diligence by end users. This is particularly true with respect to software because it is so easy to duplicate and the copy is usually as good as the original. This fact does not legitimize "software piracy" or "softlifting."

The Federal Copyright Act makes it a crime to improperly duplicate copyrighted software whether done for commercial or noncommercial purposes. **The law protects the exclusive rights of the copyright holders and does not give users the right to copy proprietary software except for backup purposes when a backup copy is not provided by the publisher.** It is illegal to make copies of proprietary software for any other purpose unless a valid license agreement covering the software stipulates otherwise.

It is the State's and the Ohio Board of Pharmacy's policy to honor the intellectual property rights of people and organizations that own title to the software the Board of Pharmacy uses. Additionally, duplicating, selling or otherwise copying software products that others have proprietary rights in may be a violation of the law and is firmly forbidden by the State.

Unless a special arrangement has been made between the State and the software publisher, **Board of Pharmacy personnel must follow the "one software package/one computer"** rule when using software. For software carrying a copyright notice, this means that an equivalent number of software packages should be purchased for every computer on which the software is installed. With regard to software installed on servers supporting multiple personal computers, use of the software shall be limited to the number of concurrent users authorized by the software's publisher under a valid license agreement between the Board of Pharmacy and the publisher, except when the software is designed to be installed on a server for use by multiple concurrent users and the software's documentation authorizes such use.

It is the responsibility of the Board of Pharmacy to develop a policy regarding copying and copyright issues in its organization. Although the majority of information in this Policy is related to PC software, the same standards apply to all computer platforms and the software designed for them, including mainframe software. Most mainframe/LAN software will have a license agreement that must be adhered to and enforced.

The Board of Pharmacy computer personnel will conduct periodic physical checks or audits of the agency's computers to ensure compliance with this policy. Software audits must be conducted and each computer within each department must be checked at least once annually. This audit must comply with the requirements of this Policy, set out below, and the Board of Pharmacy must assist the Department of Administrative Services with its responsibilities for verifying the results of the Board of Pharmacy's annual audit. Further, the Board of Pharmacy will complete its next annual audit and forward the results of that audit to the Department of Administrative Services no later than October 31, 1997. This software audit can be conducted at the same time the agency inventory is being completed

In conducting its annual audit, the Board of Pharmacy will make a good faith effort to collect the contents of the directory of each hard disk associated with each personal computer currently used by Board of Pharmacy employees, along with a list of any original magnetic or other media containing application software. Additionally, in instances where network use is involved, the Board of Pharmacy will seek to determine the number of file servers used within the organization, the application software on each server, the number of personal computers that are normally connected to each file server, and documentation indicating whether the software on each file server is intended for network use. To the extent that there is a lock out or security device or other method of restricting or determining usage of the application software on each file server, the agency will attempt to document such usage and restrictions. If the agency does not have any lockout device or other method of determining or restricting usage of the application software on each file server, the number of copies will be determined by the number of personal computers that are normally connected to that file server if the application can be executed remotely from the server's hard drive and is not intended for such by the publisher. The master copy of any site-licensed software will be assigned to the Information Systems Administrator who will be required to track all copies made of the software and for which computers the copies were made.

The Board of Pharmacy will then perform a good faith search for copies of all invoices, purchase orders, license agreements, original media and/or receipts documenting the number of legally authorized copies of all software found with a copyright date after 1994. Legally authorized copies of software means copies of the software purchased from/or donated by vendors or other proper parties and copies properly made therefrom under U.S. copyright law, a license agreement or other documented authorization. **Documentation reflecting the purchase or licensing of software must be kept for the duration of the software's use at the agency.**

I am aware of, have received a copy of, and understand the software protection policies of the **Board of Pharmacy** and agree to follow the policies.

(Employee Signature)

(Date)

(Print employee name and Department)

(Supervisor Signature)

(Date)

BOARD OF PHARMACY INFORMATION SYSTEMS
P O L I C Y

BOP-IS-003
(7/14/97)

**LIMITATIONS ON THE USE OF PUBLICLY OWNED
COMPUTER HARDWARE AND SOFTWARE**

PURPOSE:

The purpose of this policy is to outline the offenses and penalties related to any misappropriation or unauthorized use of publicly owned computer hardware and software.

REFERENCE:

This is an adopted policy based on OPP-008 by the Ohio Department of Administrative Services, Division of Computer Services.

BACKGROUND:

The proliferation of computers throughout the government community is potentially the most significant development in office productivity in years. With the proliferation of desktop devices and accompanying software, greater care is required to prevent misappropriation of publicly owned computer hardware and software. Without explicit directions, employees may be involved in some form of criminal offense or inappropriate action subject to discipline and not be fully aware that they are. This policy will enhance communications regarding computer offenses by defining what is and is not permitted as it relates to publicly owned computer hardware and software.

Most criminal violations are covered by Ohio statutes: **R.C. 2913.02** (basic theft statute); **R.C. 2901.01(J)(1)**, **R.C. 2921.01(A)** (theft by public employees); **R.C. 2921.41** (theft in office statute); **R.C. 2909.05(B)(2)** (vandalism); **R.C. 2909.04(A)** (disruption of public services); **R.C. 2913.04(B)** (specifically referring to computer systems and networks as services); and **R.C. 2913.42** (record tampering).

POLICY:

A well-defined computer usage policy will be issued by the Ohio Board of Pharmacy to all agency employees.

For clarity this policy is divided into three sections: (1) **Types of Criminal Offenses** that relate to the abuse and misappropriation of both tangible computer equipment and intangible privilege to use the equipment; (2) a discussion of **Penalties** related to the abuse or misappropriation, and (3) a review of the appropriate procedures relating to the **Discipline of Public Employees** for misuse or misappropriation of computer hardware and software.

TYPES OF CRIMINAL OFFENSES

1. **Theft.** The starting place for discussing misappropriation must be Ohio's basic theft statute, **R.C. 2913.02**, which states in pertinent part:

(A) **No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in either of the following ways:**

- (1) **Without the consent of the owner or person authorized to give consent;**

- (2) **Beyond the scope of the express or implied consent of the owner or person authorized to give consent;**
- (3) **By deception;**
- (4) **By threat.**

(B) Whoever violates this section is guilty of theft . . .

There has been debate over definitions of the words "deprive" and "property." In Ohio, specific statutes have been written to clarify each.

R.C. 2913.01(C) defines the word [d]eprive as meaning, among other things, to withhold property permanently or for such a period as to appropriate a substantial portion of its value or use.

R.C. 2901.01(J)(1) Property means any property, real or personal, tangible or intangible, and any interest or license in such property. "Property" includes but is not limited to...computer data, computer software, financial instruments associated with computers, and other documents associated with computers, or copies of the documents, whether in human or machine readable form.

In accordance with these statutes, any person who physically removes Board of Pharmacy computer equipment or removes intangible items such as software without board authorization is guilty of theft and could face criminal prosecution.

Under Ohio's theft in office statute **R.C. 2921.41(A)**, which includes theft by public officials and employees, a person who pleads guilty to or is convicted of theft in office is subject to a sentence of imprisonment and is automatically disqualified from holding further public employment. Public officials and employees are also required to make full restitution, and any amounts held by a public employee's retirement system on behalf of the public official or employee may be applied toward meeting the restitution requirement under procedures set forth in **R.C. 2921.41(C)(2)**.

2. **Vandalism and Related Crimes.** An employee does not have to actually remove property to violate a provision of the Ohio Criminal Code. The vandalism statute, **R.C. 2909.05(B)(2)**, provides that:

"[n]o person shall knowingly cause serious physical harm to property that is owned, leased, or controlled by a government entity". This includes "the intentional introduction of a 'worm' or 'virus' (two common types of destructive computer programs) into a publicly owned computer network" such as the Ohio Data Network (ODN) and the Board of Pharmacy Date Network. It also includes the sabotage of publicly owned computer hardware or software by employees and by individuals outside the state agency.

Tampering with records is covered under specific statutes dealing with computer crimes. **R.C. 2913.42** states:

"[n]o person, knowing he has no privilege to do so, and with purpose to defraud or knowing that he is facilitating a fraud, shall ... [f]alsify, destroy, remove, conceal, alter, deface, or mutilate any writing, data, or records."

This statute specifically subjects to criminal prosecution any person who attempts to commit fraud by gaining access to a computer system and in any way modifies the data contained on it.

R.C. 2909.04(A) deals with the problem of disrupting public service:

"[n]o person, purposely by any means, or knowingly by damaging or tampering with any property shall do any of the following ... [i]nterrupt or impair ... mass communications service ... or other public service communications."

3. **Unauthorized Use of Property.** The difficulty of prosecuting a person for "theft of services" (i.e., an unauthorized use of computer time for personal gain) has been demonstrated by

negative experiences of other states. Because of this difficulty, Ohio was one of the first states to enact legislation to define computers and computer time as a "service."

R.C. 2913.04(B) states that:

"[n]o person shall knowingly gain access to, attempt to gain access to, or cause access to be gained to any computer, computer system, or computer network without the consent of, or beyond the scope of the express or implied consent of, the owner of the computer, computer system, or computer network, or other person authorized to give consent by the owner."

Under this statute, unauthorized use or access to a computer is specifically delineated as a unique type of criminal offense, "unauthorized use of property." A public employee's use of an office computer for purposes other than work-related matters would appear to constitute an unauthorized use of property under R.C. 2913.04(B). An unauthorized electronic "break-in" by hackers would likewise appear to violate the statute.

PENALTIES

Criminal offenses, unlike suits brought under "civil" law, are prosecuted by the Office of the County Prosecuting Attorney. The remedies imposed by the court principally involve incarceration rather than monetary damages. The penalties may, however, include restitution of the stolen property or its monetary value.

Unlike prosecutions under the Ohio Criminal Code, the purpose of a civil action is not to directly punish an individual for his/her actions. Civil lawsuits are brought to repay a party for lost property or profits. Under **R.C. 109.02 and R.C. 109.16**, the Attorney General is authorized, at the request of the Governor, to bring such actions on behalf of the state.

DISCIPLINE OF PUBLIC EMPLOYEES FOR MISUSE OF COMPUTERS AND COMPUTER PRIVILEGES

In addition to any criminal and civil penalties discussed in this policy, public employees may be subject to discipline for computer-related offenses such as computer theft and unauthorized use.

The type of discipline may vary according to the classification of the employee and whether or not the employee is in a bargaining unit.

Unclassified employees serve at the pleasure of the appointing authority, and may be dismissed without cause. Any computer-related offense could be grounds for the termination of unclassified employees.

As for classified employees, **R.C. 124.34** limits both the reasons for, and the methods of, employee discipline. Under this section, the state employer has the right to discipline classified employees for several specified reasons, including incompetency, inefficiency, dishonesty, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or any other failure of good behavior. Discipline may include reduction in pay, demotion, suspension or removal. The theft or vandalism of publicly owned computer equipment or software appears to fit within the definition of dishonesty or immoral conduct.

Union contracts, negotiated biennially, provide employees with a number of procedural and substantive rights in addition to those set forth in R.C. 124.34. Contracts typically provide that an employee cannot be disciplined without "just cause." The Board of Pharmacy has the burden of establishing that it has just cause for imposing the discipline. Contracts can also limit the type of discipline the Board of Pharmacy can impose. Discipline is typically "progressive," beginning with a verbal reprimand and ending with termination. Contracts also permit the discipline to be commensurate with the offense. The Board of Pharmacy, therefore, may not necessarily be strictly limited to the progressive discipline requirement where the offense is a severe one, such as the malicious destruction of computer files.

The discipline of classified public employees is further complicated by the fact that the United States Supreme Court has ruled that classified public employees have a constitutional "property interest" in their jobs, thus entitling them to due process hearings before they are terminated under R.C. 124.34. The due process clause of the Constitution requires that the standards for disciplining public employees must be adequately defined and evenly communicated to all employees.

OHIO BOARD OF PHARMACY INFORMATION SYSTEMS
P O L I C Y

BOP-IS-004
(7/14/97)

INTERNET, ELECTRONIC MAIL, AND ONLINE SERVICES USE AND ABUSE

PURPOSE:

The purpose of this policy is to define the responsibility of agency management with regard to building and managing Internet servers/home pages and electronic mail services and personal responsibility of state employees using the Internet.

REFERENCE:

This is an adopted policy based on OPP-022, effective January 1, 1996, by the Ohio Department of Administrative Services, Division of Computer Services.

BACKGROUND:

The Internet is the rapidly expanding world-wide network of networks connected to each other using, primarily, the Internet Protocol (IP). The Internet provides for file transfer, remote login, electronic mail, news, and other services. Electronic Mail is the transmission of memos and messages over electronic networks, including, but not limited to, the Internet. Online Services provide subscribers with a variety of reference and information exchange services which typically include connection to the Internet.

While the State of Ohio recognizes that these services are an effective means for making government agencies more accessible, more efficient, and more responsive to the needs of other government agencies and the public, their use is open to abuse.

POLICY:

This policy is divided into two sections:

- (1) Agency Management Responsibility with regard to building and managing the Internet servers/home page, electronic mail, and online services and the use of these services by their employees; and
- (2) Personal Responsibility of state employees using the Internet, electronic mail, and online services.

AGENCY MANAGEMENT RESPONSIBILITY:

The Board of Pharmacy is an agency that builds and manages a home page on the World Wide Web on the State of Ohio Internet Server, electronic mail services, and provides agency staff with access to these services. Therefore, the Board has certain management responsibilities.

- (1) The Board of Pharmacy will register their public access Internet server with OPP so that OPP may validate compliance with statewide standards. Upon validation, these servers shall be linked to the "State of Ohio Front Page." The Board of Pharmacy does not maintain its own server at this time.
- (2) The Board of Pharmacy will comply with said guidelines published by DAS for formats and linkages relative to the Internet-based services they provide or intend to provide.
- (3) The Board of Pharmacy will insure that critical information is not compromised. For applications where Internet users can access agency software and data, a separate server shall be installed.
- (4) The Board of Pharmacy will monitor the information made available on their servers/home page to insure that it is appropriate and meets the state and agency standards for quality and timeliness.
- (5) The Board of Pharmacy will insure that all personnel who have access to the Internet, electronic mail, and online services are aware of their responsibilities. Some, but not all, of these responsibilities are enumerated in the following section. To heighten awareness of their responsibility, all employees will sign a Code of Responsibility.

PERSONAL RESPONSIBILITY:

Use of the Internet, electronic mail, and online services has great potential to enhance the productivity of state employees in the Board of Pharmacy. At the same time, as is the case with all state resources made available to employees, abuse is possible. Employees must be held accountable for their use and misuse of government resources, of which access to the Internet, electronic mail systems, and online services are but three examples. The following addresses some, but not necessarily all, of the uses subject to abuse.

- (1) The Internet, electronic mail, and online services are intended to be used for state business purposes only. Uses that interfere with normal business activities, involve solicitation, are associated with any for-profit business activities, or could potentially embarrass the State, are strictly forbidden. State employees are advised to remove themselves from all newsgroups not dealing with work-related topics.
- (2) Board of Pharmacy employees will not use the Internet, electronic mail, or online services for operating a business for personal gain, sending chain letters, or soliciting money for religious or political causes.
- (3) Board of Pharmacy employees will not use the Internet, electronic mail, and online services to disseminate offensive or harassing statements, including disparagement of others based on their race, national origin, sex, sexual orientation, age, disability, and religious or political beliefs.
- (4) Board of Pharmacy employees will not use the Internet, electronic mail, and online services to disseminate incendiary statements which might incite violence or describe or promote the use of weapons or devices associated with terrorist activities.
- (5) Board of Pharmacy employees will not use the Internet, electronic mail, and online services to disseminate or solicit sexually oriented messages or images.
- (6) Board of Pharmacy employees will not use the Internet, electronic mail, and online services to disseminate or print copyrighted materials (including articles and software) in violation of copyright laws.
- (7) Use of the Internet, electronic mail, and online services will be viewed no differently than the use of other state equipment (e.g., telephone, fax, or copier).
- (8) Board of Pharmacy employees will not use the Internet, electronic mail, and online services to provide access to confidential information. Board of Pharmacy employees shall not use the Internet, electronic mail, and online services to provide access to public information without following the existing rules and procedures of the Board of Pharmacy for dissemination.
- (9) Board of Pharmacy employees will not use the Internet, electronic mail, or online service account or signature line other than their own.
- (10) Board of Pharmacy employees will take all reasonable precautions to prevent the inadvertent dissemination of anyone else's information via the Internet, electronic mail, or online services.

OHIO BOARD OF PHARMACY INFORMATION SYSTEMS P O L I C Y

BOP-IS-005
(7/14/97)

CODE OF RESPONSIBILITY FOR SECURITY AND CONFIDENTIALITY OF DATA FILES AND SAFEGUARDING STATE ASSETS

Security, confidentiality and the safeguarding of State assets is a matter for concern of employees of the Board of Pharmacy and of all other persons who have access to the Board of Pharmacy Data Network's facilities whether they are employees of vendors, employees of user agencies or others. The Board of Pharmacy Data Network is a repository of information in computerized data files for the State of Ohio Board of Pharmacy. Each person in the agency holds a position of trust relative to this

information and recognizes the responsibilities entrusted to him/her and to the Board in preserving the security and confidentiality of this information and safeguarding State assets. The employee's conduct either on or off the job may threaten the security and confidentiality of this information. Therefore, an employee of the Board of Pharmacy or a person authorized access to the Board of Pharmacy Data Network:

is not to make or permit unauthorized use of any information in files maintained by the Board of Pharmacy;

is not to seek to benefit personally or permit others to benefit personally by any information which has come to him/her by virtue of his/her work assignment;

is not to knowingly include or cause to be included in any record or report a false, inaccurate, or misleading entry;

is not to remove or cause to be removed copies of any official record or report from any file from the office where it is kept except in the performance of his/her duties;

is not to operate or request others to operate any of the Board of Pharmacy equipment for personal business;

is not to make copies of software or literature in violation of copyright laws;

is not to abuse or permit abuse of the Board of Pharmacy's system communications capabilities (e.g., inappropriate/personal messages);

is not to divert the Board of Pharmacy's resources and Board of Pharmacy property for personal gain;

is not to aid, abet or act in conspiracy with another to violate any part of this code;

is to report any violation of this code by anyone to the supervisor immediately;

is to adhere to the rules, policies and procedures of the State of Ohio Civil Service if he/she is a State employee.

For Board of Pharmacy employees, violation of the Code will result in disciplinary action, such as a reprimand, suspension or dismissal, consistent with Civil Service rules and regulations.

For non-Board of Pharmacy employees, violation of this Code will result in denial of access to the Ohio Board of Pharmacy Data Network and criminal charges as appropriate.

I have read and understand the Board of Pharmacy's Code of Responsibility for Security and Confidentiality of Data Files and Safeguarding State Assets.

Signed: _____
(employee)

Signed: _____
(supervisor)

Date: _____

Date: _____

The Board then discussed the fact that a Federal District Court ruled that FDA has jurisdiction under the federal Food, Drug, and Cosmetic Act to regulate nicotine-containing cigarettes and smokeless tobacco. The Court held that "tobacco products fit with the FDCA's definitions of "drug" and "device, and FDA can regulate cigarettes and smokeless tobacco products as drug delivery devices under the combination product and restricted device provisions of the Act. Staff discussed the fact that the Board has the authority to enforce provisions of the federal Food, Drug, and Cosmetic Act since violations of the federal law are grounds for acting against the license of a terminal distributor of dangerous drugs.

Board members stated that they are beginning to become aware of problems with the purchase of nicotine patches by individuals under 18 years of age for abuse purposes since they are available over the counter without any restrictions.

