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Minutes of the May 7-9, 2007 Meeting of the Ohio State Board of Pharmacy

MONDAY, MAY 7, 2007

9:00 a.m. The Ohio State Board of Pharmacy convened in Room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

James E. Turner, R.Ph., *President*; Gregory Braylock, R.Ph., *Vice-President*; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Also present were William T. Winsley, *Executive Director*; Timothy Benedict, *Assistant Executive Director*; William McMillen, *Licensing Administrator*; Mark Keeley, *Legislative Affairs Administrator*; David Rowland, *Legal Affairs Administrator*; Danna Droz, *Prescription Drug Monitoring Program Director*; and Sally Ann Steuk, *Assistant Attorney General*.

R-2007-177 Mrs. Gregg moved that the Board go into Executive Session for the purpose of discussing personnel matters pursuant to Section 121.22(G)(1) of the Ohio Revised Code. Mr. Mitchell seconded the motion and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

10:21 a.m. The Executive Session ended and the meeting was opened to the public.

The Board recessed briefly.

10:31 a.m. Mrs. Droz discussed the prescription drug monitoring program with the Board.

R-2007-178 The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

Teregen Laboratories, Willoughby, Ohio (02-1235150)
Various Physician Offices listed on letter of request

After discussion, Mrs. Gregg moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Mr. Braylock and approved by the Board: Aye – 8.

R-2007-179 The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

Regency Hospital of Cleveland West, Middleburg Heights, Ohio (02-1648450)
Central Admixture Pharmacy Services, Valley View, Ohio (02-1312700)

After discussion, Mr. Giacalone moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Mrs. Gregg and approved by the Board: *Aye* – 8.

R-2007-180 The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

Mt. Carmel East Hospital Pharmacy Columbus, Ohio (02-0032900)
Central Admixture Pharmacy Services, Valley View, Ohio (02-1312700)

After discussion, Mrs. Gregg moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Mr. Lipsyc and approved by the Board: *Aye* – 8.

R-2007-181 The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

Davita RX Pharmacy, Orlando, Florida (02-1586150)
30 **Davita Dialysis Clinics** listed on letter of request

After discussion, Mr. Braylock moved that the Board approve the request for only dialysis related medications as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Mr. Lipsyc and approved by the Board: *Aye* – 8.

R-2007-182 The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

Leiter's Pharmacy, San Jose, California (02-1620150)
Various Physician Offices listed on letter of request

After discussion, Mrs. Teater moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Mr. Lipsyc and approved by the Board: *Aye* – 8.

R-2007-183 Mrs. Gregg moved that the Board authorize Mr. Winsley to sign the NABP State Board Newsletter Program Letter of Agreement. Mr. Mitchell seconded the motion and it was approved by the Board: *Aye* – 8.

Mr. Benedict said there was no Medical Board Prescribing Committee Report this month.

11:44 a.m. The Board recessed for lunch.

1:27 p.m. The Board reconvened with all members present.

R-2007-184 The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

ValueCare Pharmacy, Brecksville, Ohio (02-1677500)
Central Admixture Pharmacy Services, Valley View, Ohio (02-1312700)

After discussion, Mrs. Gregg moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Mr. Braylock and approved by the Board: *Aye* – 8.

1:30 p.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Eric Wayne Hamon**, R.Ph., (03-2-23513), Cuyahoga Falls, Ohio.

2:00 p.m.

R-2007-185

During the hearing, Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Giacalone and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

2:32 p.m.

The Executive Session ended and the hearing was put on hold pending receipt of additional evidence.

R-2007-186

Mr. McMillen then presented a request from pharmacy intern **Qusai Yusef Mohamad Al-Share**, (06-0-05520) for permission to extend his internship for one additional year due to extraordinary circumstances pursuant to Rule 4729-3-04(B) (Pharmacy intern identification card renewal). Mr. Lipsyc moved that Mr. Al-Share be permitted to renew his intern identification card for one additional year only. The motion was seconded by Mr. Giacalone and approved by the Board: Aye – 8.

R-2007-187

After a report from Mr. Keeley, Mrs. Gregg moved that the effective date for Rules that were to become effective January, 1, 2007 be changed to April 27, 2007 because the Rules had not been received by JCARR. Ms. Pasquale seconded the motion and it was approved by the Board: Aye – 8.

Mr. Keeley discussed the Legislative Report with the Board.

3:27 p.m.

The hearing in the matter of **Eric Wayne Hamon**, R.Ph., (03-2-23513), Cuyahoga Falls, Ohio resumed.

4:00 p.m.

The hearing ended and the record was closed.

R-2007-188

Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Braylock and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

4:08 p.m.

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

R-2007-189

Mrs. Gregg moved that the Board adopt the following order in the matter of **Eric Wayne Hamon**, R.Ph., (03-2-23513), Cuyahoga Falls, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-061121-014

in the matter of:

ERIC WAYNE HAMON, R.Ph.

2005 Lindbergh Avenue
Cuyahoga Falls, Ohio 44223

R.Ph. Number 03-2-23513

INTRODUCTION

The matter of Eric Wayne Hamon came for hearing on May 7, 2007, before the following members of the Board: James E. Turner, R.Ph. (*presiding*); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.;

Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member. Eric Wayne Hamon was represented by George J. Emershaw. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses: None

Respondent's Witnesses: Eric Wayne Hamon, R.Ph., Respondent
Vernon Infantino, R.Ph.

State's Exhibits:

- 1-1A. Procedurals
2. State Board of Pharmacy Order in re Eric Wayne Hamon, R.Ph. [03-09-01]

Respondent's Exhibits:

- A. Resume of Eric W. Hamon [not dated]
- B. State Board of Pharmacy Order in re Eric Wayne Hamon [03-09-01]
- C. PRO Pharmacist's Recovery Contract for Eric Hamon [09-15-03]
- D1-D14. Medical Records [01-25-01 to 07-26-04]
- E1-E8. Support Group Attendance Records [10-03-00 to 04-16-07]; Seven Certificates of Appreciation [06-06-04 to 11-09-05]
- F1-F63. FirstLab Drug Panel [updated 02-10-05]; List of Test Dates [11-03-03 to 04-16-07]; Licensee Summary Report [11-03-03 to 08-22-05]; Drug Screen Reports [11-03-03 to 04-16-07]; Test History Report [09-12-05 to 04-16-07]
- G. Calendar Color Key [not dated]; Calendar Pages from January 2000 through December 2007
- H. Copy of Ohio Driver License for Eric W Hamon [04-03-07]; Sentencing Entry Portage County Municipal Court [03-07-01]; Ohio Bureau of Motor Vehicles Administrative License Suspension [05-16-03]
- I. Two Letters of Support [04-03-07 to 04-09-07]; Progress Report Letter from Thomas A. Masters, MDiv, PCC [04-13-07]
- J. Copy of FedEx Receipt No. 8544 5491 4770 [10-04-06]; Copy of Application For Examination As A Pharmacist for Eric W. Hamon [not dated]
- K. Summary of Continuing Education Courses [04-29-01 to 03-21-07]; Continuing Pharmaceutical Education Credits and Certificates [04-29-01 to 03-21-07]
- L. Eric Wayne Hamon Timeline [11-07-00 to 05-07-07]

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 that Eric Wayne Hamon has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-001107-018, effective May 9, 2001.

DECISION OF THE BOARD

On the basis of the Finding of Fact set forth above, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card, No. 03-2-23513, held by Eric Wayne Hamon to practice pharmacy in Ohio and places Eric Wayne Hamon on

probation for ten years effective from the date his pharmacist identification card is issued, with the following conditions:

- (A) Eric Wayne Hamon must take and pass the NAPLEX examination or an equivalent examination acceptable to the Board before his pharmacist identification card will be issued.
- (B) Eric Wayne Hamon must enter into a **new** contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) approved treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and submit a copy of the signed contract to the Board office before his pharmacist identification card is issued. The contract must provide that:
 - (1) **Random, observed** urine drug screens shall be conducted at least once each month for the first year and then at least once every three months for the remaining four years.
 - (a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.
 - (b) Results of all drug screens must be negative. Refusal of a urine screen or a diluted urine screen is equivalent to a positive result. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.
 - (2) The intervener/sponsor shall submit to the Board reports, in a format acceptable to the Board, indicating drug screens and their results in a timely fashion. Actual copies of drug screens shall be made available to the Board upon request.
 - (3) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - (4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (C) Eric Wayne Hamon must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10 of each year of probation) that include:
 - (1) The written report and documentation provided by the treatment program pursuant to the contract, and
 - (2) A written description of Eric Wayne Hamon's progress towards recovery and what Eric Wayne Hamon has been doing during the previous three months.
- (D) Other terms of probation are as follows:
 - (1) The State Board of Pharmacy hereby declares that Eric Wayne Hamon's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training

pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.

- (2) Eric Wayne Hamon may not serve as a responsible pharmacist.
- (3) Eric Wayne Hamon may not destroy, assist in, or witness the destruction of controlled substances.
- (4) Eric Wayne Hamon must abide by the contract with his treatment provider and must immediately report any violation of the contract to the Board.
- (5) Eric Wayne Hamon must not violate the drug laws of Ohio, any other state, or the federal government.
- (6) Eric Wayne Hamon must abide by the rules of the State Board of Pharmacy.
- (7) Eric Wayne Hamon must comply with the terms of this Order.
- (8) Eric Wayne Hamon's license is deemed not in good standing until successful completion of the probationary period.

Any violation of probation may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.

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

Mr. Braylock seconded the motion and it was approved by the Board: Aye – 8.

4:09 p.m. The meeting was recessed for the day.

TUESDAY, MAY 8, 2007

9:00 a.m. The Ohio State Board of Pharmacy convened in Room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

James E. Turner, R.Ph., *President*; Gregory Braylock, R.Ph., *Vice-President*; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

R-2007-190 After discussion, Mrs. Gregg moved that the minutes of the April 9-11, 2007 meeting be approved as amended. The motion was seconded by Mrs. Teater and approved by the Board: Aye – 8.

9:19 a.m. Mr. Mitchell moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code and to confer with an attorney for the Board regarding pending or imminent court action pursuant to Section 121.22(G)(3) of the Ohio Revised Code. The motion was seconded by Ms. Eastman and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

10:36 a.m. The Executive Session ended and the meeting was opened to the public.

10:37 a.m. Mr. Rowland announced that the following settlement agreement with **Home Medical Enhancement Services, Inc.**, (02-1299000), Cincinnati, Ohio has been signed by all parties and is now effective:

R-2007-191

SETTLEMENT AGREEMENT WITH THE OHIO STATE BOARD OF PHARMACY

Docket Number 060626-089

in the matter of:

HOME MEDICAL ENHANCEMENT SERVICES, INC.

c/o Dino Martis, President
7798 Reading Road, Suite 5
Cincinnati, Ohio 45237

Terminal Distributor Number 02-1299000

This settlement agreement is entered into by and between Home Medical Enhancement Services, Inc. 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.

Home Medical Enhancement Services, Inc. enters into this agreement being fully informed of its rights afforded under Chapter 119. Of the Ohio Revised Code, including the right to representation by counsel, the right to a formal adjudication hearing on the issues contained herein, the right to appeal. Home Medical Enhancement Services, Inc. acknowledges that by entering into this agreement it has waived its rights under Chapter 119. of the Revised Code.

WHEREAS, the State Board of Pharmacy is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, refuse to renew any license issued to a terminal distributor of dangerous drugs pursuant to section 4729.54 of the Revised Code, or may impose a monetary penalty on the license holder, for violation of any of the enumerated grounds of Section 4729.57 of the Ohio Revised Code.

WHEREAS, Home Medical Enhancement Services, Inc. is a licensed terminal distributor of dangerous drugs in the State of Ohio.

WHEREAS, on or about June 26, 2006, pursuant to Chapter 119. of the Ohio Revised Code, Home Medical Enhancement Services, Inc. was notified of the allegations or charges against it, its right to a hearing, its rights in such hearing, and its right to submit contentions in writing. Further, a hearing was scheduled. The June 26, 2006, Notice of Opportunity for Hearing contains the following allegations or charges:

- (1) Records of the Board of Pharmacy indicate that Home Medical Enhancement Services, Inc. is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs. Records further reflect that Dino Martis is the president of the corporation.
- (2) Home Medical Enhancement Services, Inc. did, on or about July 18, 2005, sell and/or hold or offer for sale a drug that was misbranded, to wit: the pharmacy compounded and dispensed Rx #22795, labeled as albuterol 2.5 mg/ipratropium 0.5 mg/triamcinolone 0.2 mg 2.5 mL #30 with 90 day expiration date; when potency was tested, the product tested only 55% of

the labeled triamcinolone on August 18, 2005. Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.

- (3) Home Medical Enhancement Services, Inc. did, on or about the following dates, sell and/or hold or offer for sale a drug that was misbranded, to wit: the pharmacy compounded on July 26, 2005, and dispensed the following prescriptions, labeled as albuterol 2.5 mg/ipratropium 0.5 mg/triamcinolone 0.4 mg 2.5 mL with 90 day expiration date from date of compounding; when potency was tested, the product tested only 27.5% of the labeled triamcinolone on August 18, 2005.

Rx #28738 for quantity 120 on 07/26/05
Rx #23522 for quantity 60 on 08/09/05

Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.

- (4) Home Medical Enhancement Services, Inc. did, on or about the following dates, sell and/or hold or offer for sale a drug that was misbranded, to wit: the pharmacy compounded on July 29, 2005, and dispensed the following prescriptions, labeled as albuterol 2.5 mg/ipratropium 0.5 mg/betamethasone 80 mcg 2.5 mL with 90 day expiration date from date of compounding; when potency was tested, the product tested only 42.4% of the labeled albuterol amount and only 40% of the labeled ipratropium on August 15, 2005.

Rx #28792 for quantity 90 on 08/01/05
Rx #26259 for quantity 120 on 08/04/05

Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.

- (5) Home Medical Enhancement Services, Inc. did, on or about September 6, 2005, sell and/or hold or offer for sale a drug that was misbranded, to wit: the pharmacy compounded and dispensed the following prescriptions, labeled as formoterol 12 mcg/budesonide 0.5 mg 2.5 mL with 90 day expiration date; when potency was tested, the product tested only 73.6% of the labeled formoterol on September 7, 2005.

Rx #29727 for quantity 30/60*
Rx #29728 for quantity 30/60*
Rx #25270 for quantity 30/60*
Rx #25165 for quantity 30/60*
Rx #25430 for quantity 30/60*

Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.

- (6) Home Medical Enhancement Services, Inc. did, on or about September 12, 2005, sell and/or hold or offer for sale a drug that was misbranded, to wit: the pharmacy compounded and dispensed Rx #23522, labeled as albuterol 2.5 mg/ipratropium 0.5 mg/triamcinolone 0.4 mg 2.5 mL #30/60* with 90 day expiration date; when potency was tested, the product tested only 85% of the labeled triamcinolone on September 13, 2005. Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.

* The original documents detailed said quantities as the amounts dispensed. It is undetermined from a reading of these records the actual amounts dispensed. On all such occasions, however, at least the minimum noted were dispensed.

- (7) Home Medical Enhancement Services, Inc. did, on or about the following dates, sell and/or hold or offer for sale a drug that was misbranded, to wit: the pharmacy compounded and dispensed the following prescriptions, labeled as formoterol 12 mcg/budesonide 0.5 mg 2.5 mL that was compounded and not terminally sterilized on 11/3/05; the testing laboratory notified Home Medical Enhancement Services, Inc. on November 14, 2005, that there was fungal contamination in the product. Though 23 patients were notified to discard the medication, some patients had inhaled some of the product.

Rx #26577 for quantity 60 on 11/09/05
Rx #30702 for quantity 60 on 11/09/05
Rx #31305 for quantity 60 on 11/09/05
Rx #31315 for quantity 60 on 11/09/05
Rx #31317 for quantity 30 on 11/09/05
Rx #31318 for quantity 60 on 11/09/05
Rx #31321 for quantity 60 on 11/09/05
Rx #31323 for quantity 60 on 11/09/05
Rx #29727 for quantity 60 on 11/09/05
6 on 11/11/05
Rx #31336 for quantity 60 on 11/09/05
Rx #31338 for quantity 60 on 11/09/05
Rx #30071 for quantity 60 on 11/09/05
Rx #25430 for quantity 60 on 11/09/05
Rx #28683 for quantity 60 on 11/09/05
Rx #25093 for quantity 60 on 11/09/05
Rx #26378 for quantity 60 on 11/09/05
Rx #26788 for quantity 60 on 11/09/05
Rx #30661 for quantity 60 on 11/10/05
Rx #31381 for quantity 60 on 11/10/05
Rx #31387 for quantity 60 on 11/10/05
Rx #31011 for quantity 60 on 11/10/05
Rx #31426 for quantity 60 on 11/10/05
Rx #31433 for quantity 60 on 11/10/05

Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.

- (8) Home Medical Enhancement Services, Inc. did, on or about the following dates, fail to maintain a quality assurance program wherein appropriate beyond use dates were assigned to compounded products, to wit: ninety (90) day beyond use dating was used on the following compounded products without justification and continued verification:

- (a) Compounded formoterol 12 mcg/budesonide 0.5 mg 2.5 mL with 90 day beyond use dating on lot 05080901 was dispensed as:

Rx #26577 for quantity 60 on 08/11/05
Rx #29466 for quantity 60 on 08/11/05
Rx #29072 for quantity 60 on 08/15/05
Rx #25624 for quantity 60 on 08/16/05
Rx #24218 for quantity 60 on 08/16/05
Rx #29584 for quantity 30 on 08/16/05
Rx #27568 for quantity 60 on 08/17/05

Subsequent lab report on 10/13/05 (approx. 60 days) documented subpotency of budesonide at 86%.

- (b) Compounded formoterol 12 mcg/budesonide 0.5 mg 2.5 mL with 90 day beyond use dating on lot 05091903 was dispensed as:

Rx #30328 for quantity 60 on 09/22/05
Rx #25974 for quantity 60 on 09/22/05
Rx #26913 for quantity 30 on 09/22/05
Rx #24194 for quantity 30/60* on 09/23/05
Rx #29541 for quantity 30/60* on 10/03/05
Rx #29888 for quantity 30 on 10/03/05
Rx #30559 for quantity 60 on 10/03/05
Rx #24218 for quantity 30/60* on 10/19/05

Subsequent lab report on 10/24/05 (approx. 30 days) documented subpotency of budesonide at 84%. None of the prescriptions were recalled.

Such conduct is in violation of Rule 4729-19-04(H) of the Ohio Administrative Code.

- (9) Home Medical Enhancement Services, Inc. did, on or about the following dates, fail to maintain a quality assurance program to monitor product integrity specifically using end product testing of compounded products, to wit: the following compounded products were not tested for potency and/or sterility, fungal contamination, and endotoxins in violation of the Home Medical Enhancement Services, Inc. undated written policy concerning lab testing:

- (a) Lot 05082201: albuterol 2.5 mg/ipratropium 0.5 mg/triamcinolone 0.2 mg 2.5 mL dispensed as:

Rx #22795 for quantity 30 on 08/22/05

No labs (potency, sterility, fungal, endotoxin) were requested. Previous compounding of this formula on 07/18/05 was subpotent. Formula did not have a terminal sterilization step.

- (b) Lot 05093003: albuterol 2.5 mg/ipratropium 0.5 mg/triamcinolone 0.2 mg 2.5 mL dispensed as:

Rx #22795 for quantity 30 on 09/30/05

No sterility, fungal or endotoxin testing were requested. Formula did not have a terminal sterilization step.

- (c) Lot 05101001: albuterol 2.5 mg/ipratropium 0.5 mg/dexamethasone 0.2 mg 2.5 mL dispensed as:

Rx #27543 for quantity 120 on 10/10/05

Rx #27136 for quantity 90 on 10/27/05

Rx #29576 for quantity 90 on 11/01/05

No labs (potency, sterility, fungal, endotoxin) were requested.

- (d) Lot 05101104: albuterol 2.5 mg/ipratropium 0.5 mg/betamethasone 80 mcg 2.5 mL dispensed as:

Rx #28792 for quantity 30/90* on 10/12/05

Rx #26259 for quantity 60/120* on 10/21/05

Rx #26259 for quantity 60/120* on 10/21/05

No labs (potency, sterility, fungal, endotoxin) were requested.

* The original documents detailed said quantities as the amounts dispensed. It is undetermined from a reading of these records the actual amounts dispensed. On all such occasions, however, at least the minimum noted were dispensed.

(e) Lot 05092001: albuterol 1.25 mg/ipratropium 0.5 mg 2.5 mL dispensed as:

Rx #29511 for quantity 30/120* on 09/20/05
Rx #27765 for quantity 30 on 10/12/05
Rx #27569 for quantity 90 on 10/18/05
Rx #29511 for quantity 120 on 10/25/05

No labs (potency, sterility, fungal, endotoxin) were requested.

(f) Lot 05093001: formoterol 12 mcg/budesonide 0.5 mg 2 mL dispensed as:

Rx #30642 for quantity 60 on 10/07/05
Rx #29657 for quantity 60 on 10/07/05
Rx #30636 for quantity 60 on 10/07/05
Rx #30071 for quantity 60 on 10/07/05
Rx #30657 for quantity 60 on 10/10/05
Rx #27531 for quantity 30/60* on 10/10/05

No sterility, fungal or endotoxin testing were requested. Formula did not have a terminal sterilization step.

(g) Lot 05093002: formoterol 12 mcg/budesonide 0.5 mg 2 mL dispensed as:

Rx #27704 for quantity 60 on 10/10/05
Rx #30661 for quantity 60 on 10/10/05
Rx #27531 for quantity 30/60* on 10/10/05
Rx #25430 for quantity 60 on 10/10/05
Rx #29613 for quantity 60 on 10/11/05
Rx #26577 for quantity 60 on 10/12/05

No sterility, fungal or endotoxin testing were requested. Formula did not have a terminal sterilization step.

(h) Lot 05101101: formoterol 12 mcg/budesonide 0.5 mg 2 mL dispensed as:

Rx #30692 for quantity 60 on 10/12/05
Rx #30702 for quantity 60 on 10/12/05
Rx #25065 for quantity 60 on 10/17/05
Rx #25624 for quantity 60 on 10/17/05
Rx #30173 for quantity 60 on 10/17/05
Rx #30158 for quantity 60 on 10/18/05
Rx #30795 for quantity 60 on 10/18/05

No fungal or endotoxin testing were requested. Formula did not have a terminal sterilization step.

* The original documents detailed said quantities as the amounts dispensed. It is undetermined from a reading of these records the actual amounts dispensed. On all such occasions, however, at least the minimum noted were dispensed.

- (i) Lot 05101102: formoterol 12 mcg/budesonide 0.5 mg 2 mL dispensed as:

Rx #30161 for quantity 60 on 10/19/05
Rx #29079 for quantity 60 on 10/19/05
Rx #29637 for quantity 60 on 10/19/05
Rx #24219 for quantity 30/60* on 10/19/05
Rx #30810 for quantity 60 on 10/19/05
Rx #29072 for quantity 60 on 10/19/05
Rx #30116 for quantity 60 on 10/20/05

No fungal or endotoxin testing were requested. Formula did not have a terminal sterilization step.

- (j) Lot 05101103: formoterol 12 mcg/budesonide 0.5 mg 2 mL dispensed as:

Rx #29728 for quantity 60 on 10/20/05
Rx #29639 for quantity 60 on 10/20/05
Rx #30779 for quantity 60 on 10/21/05
Rx #29698 for quantity 60 on 10/21/05
Rx #30864 for quantity 60 on 10/21/05
Rx #27568 for quantity 60 on 10/24/05
Rx #25270 for quantity 60 on 10/24/05

No fungal or endotoxin testing were requested. Formula did not have a terminal sterilization step.

- (k) Lot 05102101: formoterol 12 mcg/budesonide 0.5 mg 2 mL dispensed as:

Rx #30893 for quantity 60 on 10/24/05
Rx #30882 for quantity 60 on 10/24/05
Rx #30884 for quantity 60 on 10/24/05
Rx #30880 for quantity 60 on 10/24/05
Rx #25974 for quantity 60 on 10/24/05
Rx #24194 for quantity 60 on 10/24/05

No fungal or endotoxin testing were requested; formula did not have a terminal sterilization step. No potency was requested; one of three previous testings for this formula was >5% variance from expected amount of budesonide.

- (l) Lot 05102102: formoterol 12 mcg/budesonide 0.5 mg 2 mL dispensed as:

Rx #30367 for quantity 60 on 10/25/05
Rx #30315 for quantity 60 on 10/25/05
Rx #30328 for quantity 60 on 10/25/05
Rx #30915 for quantity 60* on 10/25/05
Rx #30924 for quantity 60 on 10/25/05
Rx #30922 for quantity 60 on 10/25/05
Rx #25165 for quantity 60 on 10/27/05

No fungal or endotoxin testing were requested; formula did not have a terminal sterilization step. No potency was requested; one of three previous testings for this formula was >5% variance from expected amount of budesonide.

* The original documents detailed said quantities as the amounts dispensed. It is undetermined from a reading of these records the actual amounts dispensed. On all such occasions, however, at least the minimum noted were dispensed.

(m) Lot 05102103: formoterol 12 mcg/budesonide 0.5 mg 2 mL dispensed as:

Rx #29829 for quantity 60 on 10/31/05
Rx #30526 for quantity 60 on 10/31/05
Rx #26047 for quantity 60 on 10/31/05
Rx #29466 for quantity 60 on 10/31/05
Rx #29583 for quantity 60 on 10/31/05

No fungal or endotoxin testing were requested; formula did not have a terminal sterilization step. No potency was requested; one of three previous testings for this formula was >5% variance from expected amount of budesonide.

(n) Lot 05102104: formoterol 12 mcg/budesonide 0.5 mg 2 mL dispensed as:

Rx #31059 for quantity 60 on 10/31/05
Rx #29670 for quantity 60 on 10/31/05
Rx #30497 for quantity 60 on 10/31/05
Rx #30495 for quantity 60 on 10/31/05
Rx #30448 for quantity 60 on 10/31/05
Rx #31095 for quantity 60 on 11/01/05
Rx #29541 for quantity 60 on 11/01/05

No fungal or endotoxin testing were requested; formula did not have a terminal sterilization step. No potency was requested; one of three previous testings for this formula was >5% variance from expected amount of budesonide.

Such conduct is in violation of Rule 4729-19-04(H) of the Ohio Administrative Code.

- (10) Home Medical Enhancement Services, Inc. did, from June 8, 2005, through November 14, 2005, fail to prepare and maintain a policy and procedure manual regarding the compounding, dispensing, and delivery of sterile product prescriptions. After admonition by a Board agent, a manual (containing only two undated and unsigned policies regarding lab testing and product recalls) was created but the facility was noncompliant with said manual. Such conduct is in violation of Rule 4729-19-04(B) of the Ohio Administrative Code.
- (11) Home Medical Enhancement Services, Inc., from November 18, 2005, through December 20, 2005, as a terminal distributor of dangerous drugs did fail to have a Responsible Person employed by the facility. Such conduct is in violation of Rule 4729-5-11(B)(1) of the Ohio Administrative Code.

Home Medical Enhancement Services, Inc. neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated June 26, 2006; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Home Medical Enhancement Services, Inc. knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (1) Home Medical Enhancement Services, Inc. agrees to the imposition of a monetary penalty of fifteen hundred dollars (\$1500.00), due and owing

within thirty (30) days from the effective date of this Agreement. Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43215-6126.

- (2) Home Medical Enhancement Services, Inc. agrees that it has already, and will continue to, require its pharmacist engaging in compounding to maintain competency in compounding and attend appropriate approved training to meet industry and legal standards in compounding services.

Home Medical Enhancement Services, Inc. acknowledges that it 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.

Home Medical Enhancement Services, Inc. waives any and all claims or causes of action it may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. Home Medical Enhancement Services, Inc. waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code. This agreement embodies the entire agreement between and of the parties. There are no express or implied promises, guarantees, terms, covenants, conditions, or obligations other than those contained herein; and this agreement supersedes all previous communications, representations or agreements, either verbal or written, between the parties.

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 date of the Board President's signature below.

/s/ Dino Martis, President
Home Medical Enhancement Services, Inc. Date Signed: 05/02/07

/s/ James Lindon, Attorney for Respondent Date Signed: 05/09/07

/s/ James E. Turner, President,
Ohio State Board of Pharmacy Date Signed: 05/08/07

/s/ Sally Ann Steuk,
Ohio Assistant Attorney General Date Signed: 05/08/07

Mr. Rowland announced that the following settlement agreement with **Teri Lee Varney**, R.Ph., (03-2-13951), Waverly, Ohio has been signed by all parties and is now effective:

R-2007-191

SETTLEMENT AGREEMENT WITH THE OHIO STATE BOARD OF PHARMACY

Docket Number D-061212-018

in the matter of:

TERI LEE VARNEY, R.Ph.
302 Morningside Drive
Waverly, Ohio 45690

R.Ph. Number 03-2-13951

This Settlement Agreement is entered into by and between Teri Lee Varney 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.

Teri Lee Varney voluntarily enters into this Agreement being fully informed of her rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel, the right to a formal adjudication hearing on the issues contained herein, and the right to appeal. Teri Lee Varney acknowledges that by entering into this agreement she has waived her rights under Chapter 119. of the Revised Code.

Whereas, the Board 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 enforce a monetary penalty on the license holder for violation of any of the enumerated grounds therein.

Whereas, Teri Lee Varney is licensed to practice pharmacy in the State of Ohio.

Whereas, on or about December 12, 2006, pursuant to Chapter 119. of the Ohio Revised Code, Teri Lee Varney was notified of the allegations or charges against her, her right to a hearing, her rights in such hearing, and her right to submit contentions in writing. Teri Lee Varney requested a hearing; it was scheduled. The December 12, 2006, Notice of Opportunity for Hearing contains the following allegations or charges:

- (1) Records of the State Board of Pharmacy indicate that Teri Lee Varney was originally licensed by the State of Ohio as a pharmacist on August 1, 1980, pursuant to examination, and is currently licensed to practice in Ohio.
- (2) Teri Lee Varney did, on or about July 31, 2006, dispense 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 #6719829, Teri Lee Varney did not indicate the directions for use of the drug as was prescribed by the physician. The prescription's directions called for the 3 month-old child to be dispensed 15 mg/dose Zantac liquid, but the label you affixed to the prescription bottle called for a 225 mg/dose. The child was hospitalized. 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.
- (3) Teri Lee Varney did, on or about July 31, 2006, prior to dispensing Rx #6719829, fail to review the patient profile in order to conduct prospective drug utilization review, to wit: Teri Lee Varney failed to review the patient profile for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse. Such conduct is in violation of Rule 4729-5-20 of the Ohio Administrative Code.

Teri Lee Varney neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated December 12, 2006; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Teri Lee Varney knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Teri Lee Varney agrees to the imposition of a monetary penalty of seven hundred fifty dollars (\$750.00) due and owing within thirty days from the effective date of this Agreement. Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

- (B) Teri Lee Varney must obtain, within six months from the effective date of this Agreement, six hours of continuing pharmacy education (0.6 CEUs) on preventing medication errors, which may not also be used for license renewal.

Teri Lee Varney acknowledges that she 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.

Teri Lee Varney waives any and all claims or causes of action she may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. Teri Lee Varney waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

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 date of the Board President's signature below.

/s/ Teri Lee Varney, Respondent Date Signed: 04/19/07

/s/ James E. Turner, President,
Ohio State Board of Pharmacy Date Signed: 05/08/07

/s/ Sally Ann Steuk,
Ohio Assistant Attorney General Date Signed: 05/08/07

R-2007-192 Ms. Pasquale moved that the Board accept the settlement offer presented in the matter of **Ross Putnam Turner**, D.O., R.Ph. (03-2-23163), Canal Winchester, Ohio. The motion was seconded by Mr. Mitchell and approved by the Board: *Aye – 8.*

R-2007-193 Mr. Braylock moved that the Board deny the settlement offer presented in the matter of **Aaron Craig Link**, R.Ph., (03-1-22513), Chardon, Ohio. The motion was seconded by Mrs. Gregg and approved by the Board: *Aye – 6/Nay – 2.*

R-2007-194 Mrs. Gregg moved that the Board deny the settlement offer presented in the matter of **John Ekiert**, R.Ph., (03-1-24554), Canfield, Ohio. The motion was seconded by Ms. Pasquale and approved by the Board: *Aye – 8.*

10:56 a.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Abdul Nazir Durrani**, Maumee, Ohio.

1:18 p.m. The hearing ended and the Board recessed for lunch.

1:30 p.m.

R-2007-195 The following candidates for licensure by reciprocity introduced themselves and participated in a discussion of pharmacy laws and rules with Mr. McMillen in Room South A, 39th Floor, The Vern Riffe Center. They were then presented their pharmacist identification cards.

Saida Mahmud Abbed	03-1-27726	Illinois
Maria Esposito Ashton	03-1-27844	New York
Samuel B. Dibacco	03-2-19694	Pennsylvania
Shannon Love Dorn	03-1-27767	Georgia
Klaus Arno Hieber	03-1-27819	Michigan

Susan Denise Koors	03-1-27856	Indiana
James Paul Labella	03-1-27682	Rhode Island
Tracie Leigh Crawford Lykins	03-1-27806	Virginia
Melanie Chenet McConnell	03-1-27821	Arizona
Nico Pauline Thomas Parks	03-1-27810	Texas
Darren J. Patti	03-1-27745	Illinois
Hanna Phan	03-1-27770	Michigan
Catherine Williams Price	03-1-27820	Virginia
Eric Jon Price	03-1-27850	Pennsylvania
Franz Erich Schmelzer	03-1-27871	Michigan
Tracy Elizabeth Vilvens	03-1-27722	Tennessee
Tracy Lynn Weaver	03-1-27827	Kentucky
Courtney Michelle Yee	03-1-27782	Arizona
Chad Edward Zeisig	03-1-27847	Indiana

2:09 p.m. The Board reconvened with the following members present:

James E. Turner, R.Ph., *President*; Gregory Braylock, R.Ph., *Vice-President*; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Mr. Mitchell left to attend the Physician Assistant Policy Committee meeting.

The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Christina Lynn Miller**, R.Ph., (03-3-25357), Northfield Village, Ohio.

4:32 p.m. The hearing ended and the record was closed.

4:33 p.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Braylock and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Pasquale – yes; and Teater – yes.

4:50 p.m. The Executive Session ended the meeting was opened to the public.

R-2007-196 Mr. Braylock moved that the Board deny the settlement offer in the matter of **Harold Schwartz**, R.Ph., (03-2-08013), Lyndhurst, Ohio. Mr. Giacalone seconded the motion and it was approved by the Board: Aye – 7.

4:51 p.m.
R-2007-197 Mr. Lipsyc moved that the Board adopt the following order in the matter of **Christina Lynn Miller**, R.Ph., (03-3-25357), Northfield Village, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-061207-016

in the matter of:

CHRISTINA LYNN MILLER, R.Ph.
655 Rolling Brooke Way
Northfield Village, Ohio 44067

R.Ph. Number 03-3-25357

INTRODUCTION

The matter of Christina Lynn Miller came for hearing on May 8, 2007, before the following members of the Board: James E. Turner, R.Ph. (*presiding*); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Christina Lynn Miller was represented by Douglas E. Graff. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: Thomas Miksch, Ohio State Board of Pharmacy

Respondent's Witness: Christina Lynn Miller, R.Ph., Respondent

State's Exhibits:

1. Notice of Opportunity For Hearing letter [12-07-06]
1A-1C. Procedurals
- 2.
- 3.
- 4.
- 5.
- 6.
7. Notarized Statement of Mark Franceschelli [04-23-07]
8. Notarized Statement of Jeanette Becker [04-25-07]

Respondent's Exhibits

- A. Resume of Christina Lynn Miller
- B.
- C.
- D.
- E.
- F. Two Letters of Support [05-07-07]

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 Christina Lynn Miller was originally licensed by the State of Ohio as a pharmacist on August 7, 2002, pursuant to examination, and is currently licensed to practice pharmacy in Ohio.
- (2)
- (3)

CONCLUSIONS OF LAW

- (1)
- (2)
- (3)
- (4)

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby adjudicates the matter of Christina Lynn Miller as follows:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends for six months the pharmacist identification card, No. 03-3-25357, held by Christina Lynn Miller effective as of the date of the mailing of this Order. Further, the Board suspends the suspension and places Christina Lynn Miller on probation for two years with the following conditions:
- (1) The State Board of Pharmacy hereby declares that Christina Lynn Miller's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.
 - (2) Christina Lynn Miller may not serve as a responsible pharmacist.
 - (3) Christina Lynn Miller must not violate the drug laws of Ohio, any other state, or the federal government.
 - (4) Christina Lynn Miller must abide by the rules of the State Board of Pharmacy.
 - (5) Christina Lynn Miller must comply with the terms of this Order.
 - (6) Christina Lynn Miller's license is deemed not in good standing until successful completion of the probationary period.
 - (7) Any violation of probation may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.
- (B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes on Christina Lynn Miller a monetary penalty of one thousand five hundred dollars (\$1,500.00) due and owing within thirty days of the mailing of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

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

Ms. Eastman seconded the motion and it was approved by the Board: *Aye – 6/Nay – 0/Abstain – 1*(Braylock).

Mr. Mitchell returned and joined the proceedings.

Mr. Braylock discussed the Nursing Board's Committee on Prescriptive Governance Report for this month.

Mr. Mitchell discussed the Physician Assistant Policy Committee's meeting of May 8, 2007.

Mr. Braylock discussed his visit to the University of Findlay School of Pharmacy April 18-20, 2007 to represent the Board at the Accreditation Council for Pharmacy Education survey.

5:20 p.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Lipsyc and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes, Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

5:31 p.m. The Executive Session ended and the meeting was opened to the public.

R-2007-198 Mr. Giacalone moved that the Board adopt the following order in the matter of **Abdul Nazir Durrani**, Maumee, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-061212-020

in the matter of:

ABDUL NAZIR DURRANI, R.Ph.

2841 Byrnwyck West
Maumee, Ohio 43537

INTRODUCTION

The matter of Abdul Nazir Durrani came for hearing on May 8, 2007, before the following members of the Board: James E. Turner, R.Ph. (*presiding*); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Abdul Nazir Durrani was not represented by counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: Dale Fritz, Jr., Ohio State Board of Pharmacy

Respondent's Witnesses: Abdul Nazir Durrani, Respondent
Khalida Durrani, M.D.

State's Exhibits:

1. Proposal to Deny/Notice of Opportunity For Hearing letter [12-12-06]
1A-1B. Procedurals
2. Application for Examination As A Pharmacist with attachment submitted by Abdul Nazir Durrani [03-28-06]
3. Administrative Complaint, In the Matter of: Abdul Nazir Durrani, R.Ph. and Pakam, Inc., d/b/a Imperial Pharmacy, Complaint No. 53-96-0729-00, State of Michigan, Department of Commerce, Board of Pharmacy, Disciplinary Subcommittee [08-14-96]
4. Final Order, Michigan Board of Pharmacy [06-26-97]
5. Board's Findings of Fact and Conclusions of Law, Michigan Board of Pharmacy [06-25-03]
6. Final Order Denying Reinstatement, Michigan Board of Pharmacy [08-25-03]
7. Final Order Denying Reconsideration, Michigan Board of Pharmacy [02-18-04]

8. Indictment, United States of America v. Abdul Nazir Durrani, R.Ph., Case No. 95-CR-80782-DT-01, U.S. District Court, Eastern District of Michigan [08-23-95]; Judgment In A Criminal Case [07-11-96]

Respondent's Exhibits:

- A. Reinstatement Letter from William J. Hughes, Department of Health and Human Services [05-15-06]
B. Reinstatement Letter from J. David Cope, United States Office Of Personnel Management [07-12-06]
C. Letter from Paul V. Unger, Ph.D [08-16-04]
D. Copy of Nuclear Medicine Completion Certificate for Abdul Durrani [08-30-05]
E-N. Ten letters of Recommendation [03-12-07 to 04-25-07]
O1-017. Continuing Pharmaceutical Education Credits and Certificates [02-01-02 to 03-28-07]
O18. NAPLEX and Law Review Invitation [04-07-04]
P1-P2. Credit Card Charge Receipt for Rx #594866 [06-24-95]
P3. Rx #594866 [06-20-95]

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Abdul Nazir Durrani submitted an application for examination as a pharmacist on or about March 28, 2006.
- (2) Abdul Nazir Durrani did, on or about February 29, 1996, plead guilty to one (1) count of Acquiring Controlled Substance by Fraud 21 under USC 843(a)(3), a felony under federal law. United States of America vs Abdul Nazir Durrani, Criminal No. 95-80782, United States District Court, Eastern District of Michigan, Southern Division. Abdul Nazir Durrani was sentenced to 18 months in prison.
- (3) Abdul Nazir Durrani's license to practice pharmacy in the State of Michigan was revoked on June 26, 1997. Such revocation, indicates that Abdul Nazir Durrani is not of good moral character and habits and/or has been disciplined by a board of pharmacy within the meaning of Rule 4729-5-04 of the Ohio Administrative Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraph (2) 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.
- (3) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes having been convicted of violating any state or federal pharmacy or drug law as provided in paragraph (B) of Rule 4729-5-04 of the Ohio Administrative Code.

- (4) The State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes not being of good moral character and habits as provided in paragraph (C) of Rule 4729-5-04 of the Ohio Administrative Code.
- (5) The State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes having been disciplined by the Michigan Board of Pharmacy pursuant to Section 4729.16 of the Revised Code as provided in paragraph (F) of Rule 4729-5-04 of the Ohio Administrative Code.

DECISION OF THE BOARD

Pursuant to Sections 4729.08 and 4729.16 of the Ohio Revised Code and Rule 4729-5-04 of the Ohio Administrative Code, and on the basis of the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby denies the issuance of a certificate of registration or an identification card to practice as a pharmacist in Ohio and, therefore, denies the Application for Examination As A Pharmacist submitted by Abdul Nazir Durrani on March 23, 2006.

Ms. Pasquale seconded the motion and it was approved by the Board: *Aye – 7/Nay – 1.*

5:33 p.m. The meeting was recessed for the day.

WEDNESDAY, MAY 9, 2007

8:30 a.m. The Ohio State Board of Pharmacy convened in Room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

James E. Turner, R.Ph., *President*; Gregory Braylock, R.Ph., *Vice-President*; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

8:32 a.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Braylock and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

8:45 a.m. Ms. Eastman arrived and joined the meeting in progress.

9:15 a.m. The Executive Session ended and the meeting was opened to the public.

9:22 a.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Robert Temple**, R.Ph., (03-3-11759), Waldo, Ohio.

10:19 a.m. The hearing ended and the record was closed.

Mr. Braylock moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mrs. Gregg and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Pasquale – yes; and Teater – yes.

10:31 a.m. The Executive Session ended and the meeting was opened to the public.

R-2007-199

Mr. Braylock moved that the Board adopt the following order in the matter of **Robert Temple**, R.Ph., (03-3-11759), Waldo, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-070111-024

in the matter of:

ROBERT W. TEMPLE, R.Ph.

3456 Berringer Road
Waldo, Ohio 43356

R.Ph. Number 03-3-11759

INTRODUCTION

The matter of Robert W. Temple came for hearing on May 9, 2007, before the following members of the Board: James E. Turner, R.Ph. (*presiding*); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Mr. Mitchell recused himself from the hearing.

Robert W. Temple was not represented by counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses: John C. Whittington, D.O., R.Ph.,
Ohio State Board of Pharmacy
Robert W. Temple, R.Ph., Respondent

Respondent's Witnesses: None

State's Exhibits:

1. Notice of Opportunity For Hearing letter [01-11-07]
1A-1D. Procedurals
2. Rx #554582 [01-10-06]
3. Copy of Dangerous Drug Distributor Inspection Report [09-25-06];
Response to Inspection Report [09-29-06]
4. CVS Pharmacy #3432 Patient Prescription Record [09-01-05 to 09-25-06]
5. Rx #N623760 [09-12-06]
6. Copy of Dangerous Drug Distributor Inspection Report [09-25-06];
Response to Inspection Report [09-29-06]
7. CVS Pharmacy #3432 Patient Prescription Record [01-01-06 to 12-31-06]

Respondent's Exhibits:

- A-E. Five Letters of Support [04-24-07 to 05-06-07]
- F. Letter, with attachments, from Robert Temple to Tom Ryan, [12-16-03]

FINDINGS OF FACT

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

- (1) Records of the State Board of Pharmacy indicate that Robert W. Temple was originally licensed by the State of Ohio as a pharmacist on August 4, 1976, pursuant to examination, and is currently licensed to practice pharmacy in Ohio. Records further reflect during the relevant time periods stated herein, Robert W. Temple was the Responsible Pharmacist at CVS/Pharmacy #3432, 535 Delaware Avenue, Marion, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) Robert W. Temple did, on or about January 10, 2006, dispense 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 #554582, Robert W. Temple did not indicate the directions for use of the drug as was prescribed by the physician. The physician had prescribed NPH Insulin, 5 units to be taken in the morning and evening. The label Robert W. Temple affixed directed the patient to use 50 units in the morning and again in the evening each day. 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.
- (3) Robert W. Temple did, on or about January 10, 2006, prior to dispensing Rx #554582, fail to review the patient profile in order to conduct prospective drug utilization review (DUR), to wit: Robert W. Temple failed to review the patient profile for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse. Robert W. Temple admitted to a Board agent that he did not conduct DUR, and Robert W. Temple stated that contacting the physician to discuss the dosage "never occurred" to him. Such conduct is in violation of Rule 4729-5-20 of the Ohio Administrative Code.
- (4) Robert W. Temple did, on or about September 12, 2006, misbrand a drug, to wit: when Robert W. Temple received a prescription for methylphenidate 20 mg, Rx #N623760, he dispensed oxycodone with APAP 5/325 mg, which had not been specifically prescribed by the physician. The patient was subsequently treated for harm. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (5) Robert W. Temple did, on or about September 12, 2006, prior to dispensing Rx #N623760, fail to review the patient profile in order to conduct prospective drug utilization review (DUR), to wit: Robert W. Temple failed to review the patient profile for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse. Robert W. Temple admitted to a Board agent that he did not conduct DUR. Such conduct is in violation of Rule 4729-5-20 of the Ohio Administrative Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (5) of the Findings of Fact constitute being guilty of 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 (3) and (5) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

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

- (A) 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 imposes a monetary penalty of two hundreds fifty dollars (\$250.00) on Robert W. Temple and payment in full is due and owing within thirty days of the mailing of this Order. The remittance should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.
- (B) Robert W. Temple must obtain, within six months from the effective date of this Order, six hours of approved continuing pharmacy education (0.6 CEUs) on Preventing Medication Errors, which may not also be used for license renewal.

Mrs. Gregg seconded the motion and it was approved by the Board: Aye – 7.

10:34 a.m. The Board recessed briefly.

10:58 a.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code and to confer with an attorney for the Board regarding pending or imminent court action pursuant to Section 121.22(G)(3) of the Ohio Revised Code. The motion was seconded by Ms. Pasquale and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

11:17 a.m. The Executive Session ended and the meeting was opened to the public. The Board recessed for lunch.

1:10 p.m. The Board reconvened with all members present.

1:11 p.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Mitchell and a roll-call vote was conducted by President Turner as follows: Eastman – yes, Braylock – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

1:15 p.m. The Executive Session ended and the meeting was opened to the public.

R-2007-200 Mr. Braylock moved that the Board accept the following Settlement Agreement in the matter of **Daniel J. Huffman, R.Ph.**, (03-2-23577), Warren, Ohio.

SETTLEMENT AGREEMENT WITH THE OHIO STATE BOARD OF PHARMACY

Docket Number D-060111-054

in the matter of:

DANIEL JOSEPH HUFFMAN, R.Ph.
2301 Howland Wilson Road, N.E.
Warren, Ohio 44484
R.Ph. Number 03-2-23577

This Settlement Agreement is entered into by and between Daniel Joseph Huffman 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.

Daniel Joseph Huffman voluntarily 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, the right to a formal adjudication hearing on the issues contained herein, and the right to appeal. Daniel Joseph Huffman acknowledges that by entering into this agreement he has waived his rights under Chapter 119. of the Revised Code.

Whereas, the Board 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 enforce a monetary penalty on the license holder for violation of any of the enumerated grounds therein.

Whereas, Daniel Joseph Huffman's licensed to practice pharmacy in the State of Ohio was summarily suspended on January 11, 2006.

Whereas, on or about January 11, 2006, and November 21, 2006, pursuant to Chapter 119. of the Ohio Revised Code, Daniel Joseph Huffman 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. Daniel Joseph Huffman requested a hearing.

Daniel Joseph Huffman neither admits nor denies the allegations stated in the Summary Suspension/Notice of Opportunity for Hearing letter dated January 11, 2006, and Addendum Notice dated November 21, 2006; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, Daniel Joseph Huffman knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Agreement issued to Daniel Joseph Huffman on January 11, 2006.

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. 03-2-23577, held by Daniel Joseph Huffman and such suspension is effective as of the date of the mailing of this Agreement.

- (A) Daniel Joseph Huffman, 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) Daniel Joseph Huffman, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Agreement 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 three years from the effective date of this Agreement, the Board will consider any petition filed by Daniel Joseph Huffman 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:

- (A) Daniel Joseph Huffman must enter into a **new** contract, signed within thirty days after the effective date of this Agreement, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, and submit a copy of the signed contract to the Board office. The contract must provide that:
- (1) **Random, observed** urine drug screens shall be conducted at least once each month.
 - (a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.
 - (b) Results of all drug screens must be negative. Refusal of a drug screen or a diluted drug screen is equivalent to a positive result. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.
 - (2) The intervener/sponsor shall submit to the Board reports, in a format acceptable to the Board, indicating drug screens and their results in a timely fashion. Actual copies of drug screens shall be made available to the Board upon request.
 - (3) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - (4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (B) Daniel Joseph Huffman must demonstrate satisfactory proof to the Board that he is no longer addicted to or abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.
- (C) Daniel Joseph Huffman must continue with his psychiatric/psychological treatment plan.
- (D) Daniel Joseph Huffman must provide, at the reinstatement petition hearing, documentation of the following:
- (1) Compliance with the contract required in paragraph A above (e.g.- proof of giving the sample within twelve hours of notification and copies of all drug screen reports, meeting attendance records, treatment program reports, etc.);
 - (2) Compliance with the continuing pharmacy education requirements set forth in Chapter 4729-7 of the Ohio Administrative Code as applicable and in effect on the date of petitioning the Board for reinstatement;
 - (3) Compliance with the treatment plan required in paragraph C above;
 - (4) Compliance with the terms of this Agreement.
- (E) Upon such time as the Board may consider reinstatement, Daniel Joseph Huffman 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.

Daniel Joseph Huffman 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.

Daniel Joseph Huffman waives any and all claims or causes of action he may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. Daniel Joseph Huffman waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

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 date of the Board President's signature below.

<u>/s/ Daniel Joseph Huffman, R.Ph., Respondent</u>	<u>/d/ 05/09/07</u> Date Signed
<u>/s/ James Lindon, Attorney for Respondent</u>	<u>/d/ 05/09/07</u> Date Signed
<u>/s/ James E. Turner, President</u> Ohio State Board of Pharmacy	<u>/d/ 05/09/07</u> Date Signed
<u>/s/ Sally Ann Steuk</u> Ohio Assistant Attorney General	<u>/d/ 05/09/07</u> Date Signed

Mr. Giacalone seconded the motion and it was approved by the Board: Aye – 8.

R-2007-201

After discussion, Ms. Eastman moved that the Board approve a request for an exemption to Rule 4729-5-11 (Responsible Person) to allow **Monica Ohliger Lavelle**, R.Ph., (03-3-19954), North Olmstead, Ohio to be the Responsible Pharmacist for **Ohliger Drug of North Olmstead** (02-0122900) and **Ohliger Drug Long Term Care** (02-1637400) for one year. The motion was seconded by Mr. Lipsyc and approved by the Board: Aye – 8.

1:22 p.m.

R-2007-202

The Board discussed **InstyMed's** (Mendota HealthCare, Mendota, Illinois) request for approval of its electronic dispensing system. Mr. Lipsyc moved that the request be denied and the motion was seconded by Mr. Braylock. The motion was approved by the Board: Aye – 8.

1:36 p.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Danielle Lyn Timkovich**, Intern (06-0-03803) Poland, Ohio.

2:13 p.m.

The hearing ended and the record was closed.

Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Ms. Pasquale and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

2:18 p.m.

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

Mr. Braylock moved that the Board adopt the following order in the matter of **Danielle Lyn Timkovich**, Intern (06-0-03803) Poland, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-070209-032

in the matter of:

DANIELLE LYN TIMKOVICH

3031 Palmarie Drive
Poland, Ohio 44514

Intern License Number 06-0-03803

INTRODUCTION

The matter of Danielle Lyn Timkovich came for hearing on May 9, 2007, before the following members of the Board: James E. Turner, R.Ph. (*presiding*); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Danielle Lyn Timkovich was represented by Elizabeth Y. Collis. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses: None

Respondent's Witness: Danielle Lyn Timkovich, Respondent

State's Exhibits:

1. Reinstatement Hearing Request letter from Beth Collis [02-08-07]
1A-1B. Procedurals
2. State Board of Pharmacy Order In Re Danielle Lyn Timkovich [03-08-07]
2A. State Board of Pharmacy Order In Re Danielle Lyn Timkovich [09-14-06]

Respondent's Exhibits:

- A. State Board of Pharmacy Order In Re Danielle Lyn Timkovich [03-08-07]
- B. State Board of Pharmacy Order In Re Danielle Lyn Timkovich [09-14-06]
- C. PRO Pharmacist's Recovery Contract for Danielle Timkovich [02-09-07]
- C1. PRO Pharmacist's Recovery Contract for Danielle Timkovich [04-24-06]
- D. PRO Client Reporting Sheet for Quarterly Report [03-27-07]
- E-E1. Two Treatment Compliance Letters from Cynthia Schroeder, PCC, CCDCI [01-22-07 and 04-24-07]
- F. Support Group Attendance Records [01-22-07 to 04-28-07]; Calendar pages for February 2007 to April 2007
- F1. Support Group Attendance Records [08-08-06 to 01-20-07]; Calendar pages for August 2006 to January 2007
- G. Letter from Cynthia Schroeder, PCC, CCDCI [05-03-07]; Drug Screen Report [02-27-07]
- H. Letter from Michael D. Quigley, R.Ph. [04-21-07]; FirstLab Test History Report [03-08-07 to 04-26-07]
- I. Drug Screen Report [03-08-07]
- J. Order Granting Intervention in Lieu of Conviction, State of Ohio v. Danielle L. Timkovich, Case No. G-4801-CR-0200601449-000, Lucas County Common Pleas Court [06-07-06]

- K. Kroger Agreed Payment Schedule [08-10-06]; Restitution Documentation [08-18-06 to 11-29-06]
- L. Drug Screen Reports [08-01-06 to 01-18-07]
- M. The University of Toledo Official Academic Transcript For Danielle Lyn Timkovich [01-30-07]
- N. Letter from Curtis D. Black, R.Ph., Ph.D. [01-24-07]
- O. Letter from Anne M. Stover, M.D. [01-16-07]
- P. Letter from Christine Nafe [01-22-07]

FINDING OF FACT

After having heard the testimony, observed the demeanor of the witness, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds that Danielle Lyn Timkovich has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-060810-005, effective March 8, 2007.

DECISION OF THE BOARD

On the basis of the Finding of Fact set forth above, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the reinstatement of the intern identification card, No. 06-0-03803, held by Danielle Lyn Timkovich.

Further, the Board places Danielle Lyn Timkovich on probation for the duration of her internship. The terms of probation are as follows:

- (A) Danielle Lyn Timkovich must continue compliance with her current PRO treatment contract dated February 9, 2007, with the following conditions:
 - (1) Random, observed urine drug screens shall be conducted at least once each month for the first year and then at least once every three months for the remaining four years.
 - (a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.
 - (b) Results of all drug screens must be negative. Refusal of a urine screen or a diluted urine screen is equivalent to a positive result. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.
 - (2) The intervener/sponsor shall submit to the Board reports, in a format acceptable to the Board, indicating drug screens and their results in a timely fashion. Actual copies of drug screens shall be made available to the Board upon request.
 - (3) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - (4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.

- (B) Danielle Lyn Timkovich must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10 of each year of probation) that include:
- (1) The written report and documentation provided by the treatment program pursuant to the contract, and
 - (2) A written description of Danielle Lyn Timkovich's progress towards recovery and what Danielle Lyn Timkovich has been doing during the previous three months.
- (C) Other terms of probation are as follows:
- (1) Danielle Lyn Timkovich must abide by the contract with her treatment provider and must immediately report any violation of the contract to the Board.
 - (2) Danielle Lyn Timkovich must not violate the drug laws of Ohio, any other state, or the federal government.
 - (3) Danielle Lyn Timkovich must abide by the rules of the State Board of Pharmacy.
 - (4) Danielle Lyn Timkovich must comply with the terms of this Order.
 - (5) Danielle Lyn Timkovich's license is deemed not in good standing until successful completion of the probationary period.
- (D) Any violation of probation may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.

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

Mr. Mitchell seconded the motion and it was approved by the Board: Aye – 8. The Board ordered the staff to expedite the order.

Mr. Winsley discussed his meeting with Senator Timothy Grendell (R- Chesterland) regarding proposed legislation dealing with pharmacy technicians. He also distributed copies of proposed legislation and information addressing APN prescribing.

2:52 p.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Lipsyc and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes, Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

3:12 p.m. The Executive Session ended and the meeting was opened to the public.

R-2007-204 Mr. Keeley discussed the e-prescribing system from **Athena Health Care** with the Board. Mr. Giacalone moved that the Board consider the system to be approvable pending final inspection of the installed product. The motion was seconded by Mrs. Gregg and approved by the Board: Aye – 8.

R-2007-205 Mr. Keeley then discussed **America Data's** e-mail method of order transmission. Mr. Giacalone moved that it be found approvable pending final inspection of the installed product. The motion was seconded by Ms. Pasquale and approved by the Board: Aye – 8.

3:38 p.m.

R-2007-206

Mr. Mitchell moved that the Board go into Executive Session for the purpose of discussing personnel matters pursuant to Section 121.22(G)(1) of the Ohio Revised Code. Mrs. Gregg seconded the motion and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

4:10 p.m.

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

R-2007-203

Mrs. Teater moved that the Board receive Per Diem as follows:

PER DIEM	04/18	04/19	04/20	04/23	05/07	05/08	05/09	Total
Braylock	1	1	1	1	1	1	1	7
Eastman	-	-	-	-	1	1	1	3
Giacalone	-	-	-	-	1	1	1	3
Gregg	-	-	-	-	1	1	1	3
Lipsyc	-	-	-	-	1	1	1	3
Mitchell	-	-	-	-	1	1	1	3
Pasquale	-	-	-	-	1	1	1	3
Teater	-	-	-	-	1	1	1	3
Turner	-	-	-	-	1	1	1	3

The motion was seconded by Mrs. Gregg and approved by the Board: Aye – 8.

4:11 p.m.

Mr. Braylock moved that the meeting be adjourned. Mr. Lipsyc seconded the motion and it was approved by the Board: Aye – 8.

The Ohio State Board of Pharmacy
approved these Minutes June 6, 2007