

Note: These Minutes are provided for informational purposes only.
If you would like to obtain an official copy of the Minutes, please contact
the State Board of Pharmacy at 614-466-4143 for instructions and fee information.

Ohio State Board of Pharmacy 77 South High Street, Room 1702 Columbus, Ohio 43215-6126
telephone: 614-466-4143 fax: 614-752-4836 email: exec@bop.state.oh.us

Minutes of the January 8-9, 2008 Meeting of the Ohio State Board of Pharmacy

Tuesday, January 8, 2008

10:01 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:

Gregory Braylock, R.Ph., *President*; Nathan S. Lipsyc, R.Ph., *Vice-President*; Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; Dorothy S. Teater, Public Member; James E. Turner, R.Ph.; and Jerome J. Wiesenhahn, R.Ph.

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*.

10:03 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 Mr. Wiesenhahn and a roll-call vote was conducted by President Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Pasquale – *yes*; Teater – *yes*; Turner – *yes*; and Wiesenhahn – *yes*.

10:49 a.m. The Executive session ended and the Board recessed briefly.

R-2008-097 Mrs. Gregg moved that the Board accept a settlement offer in the matter of **Anita Denise Robinson**, R.Ph. (03-2-19336), Cincinnati, Ohio, as amended by the Board. The Board's acceptance of a settlement would be contingent on the respondent's agreeing to the changes made by the Board. The motion was seconded by Mr. Kolezynski and approved by the Board: *Aye* – 8.

R-2008-098 Mr. Turner moved that the Board accept a settlement offer in the matter of **Curt Robert Evans**, R.Ph. (03-1-12331), Jackson, Ohio, as amended by the Board. The Board's acceptance of a settlement would be contingent on the respondent's agreeing to the changes made by the Board. The motion was seconded by Mrs. Gregg and approved by the Board: *Aye* – 8.

R-2008-099 Mr. Mitchell moved that the Board summarily suspend the license to practice pharmacy belonging to **Bryan Paul Murphy**, Intern, (06-0-06078), Avon, Ohio, pursuant to Ohio Revised Code 3719.121(B). Mrs. Gregg seconded the motion and it was approved by the Board: *Aye* – 7/*Abstain* – Kolezynski.

R-2008-100 Mrs. Gregg moved that the Board summarily suspend the license to practice pharmacy belonging to **Richard P. Colosimo**, R.Ph. (03-2-12528), Shadyside, Ohio, pursuant to Ohio Revised Code 3719.121)(A). Mrs. Teater seconded the motion and it was approved by the Board: *Aye* – 8.

11:01 a.m. The Board discussed information received from Kaiser Permanente pertaining to the reformulation of Dilantin Kapseals by the manufacturer. No formal Board action was needed at this time.

R-2008-101 The Board considered a request for an exemption to OAC Rule 4729-5-11 (Responsible person) requesting that **Chad Edward Smith**, R.Ph. (03-1-22721), Oak Hill, Ohio be permitted to be the responsible person for the following sites:

Rite Aid, South Point, Ohio (02-0579300)

Rite Aid, Ironton, Ohio (02-1006100)

After discussion, Mrs. Gregg moved that the Board approve the request for 90 days. The motion was seconded by Mr. Turner and approved by the Board: *Aye* – 8.

R-2008-102 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 on the 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. Lipsyc and approved by the Board: *Aye* – 8.

R-2008-103 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:

Allen County Health Partners Pharmacy, Lima, Ohio (02-1612850)

Salud Community Clinic, Tipp, Ohio (02-1766000)

After discussion, Mr. Wiesenhahn 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* – 7/*Abstain* – Turner.

R-2008-104 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:

Central Ohio Compounding, Columbus, Ohio (02-1050650)

Atrium Medical Center Pharmacy, Franklin, Ohio (02-1735000)

After discussion, Mr. Lipsyc 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. Mitchell and approved by the Board: *Aye* – 8.

Mr. Keeley and Ms. Prather presented the Budget Report.

Mr. Keeley presented the Legislative Report.

12:11 p.m. The Board recessed for lunch.

1:30 p.m. The Board reconvened in room South A, 31st Floor, of the Vern Riffe Center for Government and the Arts with the following members present:

Gregory Braylock, R.Ph., *President*; Nathan S. Lipsyc, R.Ph., *Vice-President*; Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy S. Teater, Public Member; James E. Turner, R.Ph.; and Jerome J. Wiesenbahn, R.Ph.

R-2008-105

The following candidates for licensure by reciprocity introduced themselves and participated in a discussion of pharmacy laws and rules with Mr. McMillen. They were then presented their pharmacist identification cards.

Jason Matthew Adams	03-2-28415	Michigan
Margaret H. Brashear	03-2-28441	Kentucky
Patricia Ann Cash	03-2-28403	Indiana
Huey-Ling Chang	03-2-28432	Michigan
Susmita Chavala	03-2-28387	Illinois
Patricia Marie Costa	03-2-28448	West Virginia
Angela Christine Dolfi	03-2-28434	Pennsylvania
William Sanford Dutton	03-2-28440	Kentucky
James Richard Eddy	03-2-28442	West Virginia
William Kevin Fleming	03-2-28425	Kentucky
Debra Ann Gale	03-2-28424	West Virginia
Michael Brian Gonzalez	03-2-28396	Maryland
Melissa Dixon Harper	03-2-28401	West Virginia
Joseph Edward Ketola	03-2-28406	Wisconsin
Patrick Joseph Marks	03-2-28420	New York
Monalisa Mohanty-Patnaik	03-2-28411	Massachusetts
Veronica Orengo-Vazquez	03-2-28413	Michigan
Brenda Marie Parker	03-2-28414	Georgia
Lara Suzanne Picard	03-2-28427	Texas
Andrew L. Pike	03-2-28394	Massachusetts
Darren Timothy Prusha	03-2-28430	Illinois
Brittany Erin Reineck	03-2-28429	Kentucky
Karla Kay Roberts	03-2-28408	Illinois
Lindsay E. Romero	03-2-28433	Kentucky
Jane Nicolle Stacy	03-2-28418	Kentucky
Catherine Ann Van Hulle	03-2-28385	Michigan
Elizabeth Merhoff Warren	03-2-28409	Kentucky
Kathryn Elizabeth Wisner	03-2-28419	Tennessee
Paul Anthony Zagami	03-2-28412	New York
Malgorzata Ewa Zielonka	03-2-28428	Illinois

2:00 p.m. The Board reconvened in room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts with the following members present:

Gregory Braylock, R.Ph., *President*; Nathan S. Lipsyc, R.Ph., *Vice-President*; Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy S. Teater, Public Member; James E. Turner, R.Ph.; and Jerome J. Wiesenbahn, R.Ph.

2:06 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 **Corey Yvette Thompson**, R.Ph. (03-3-23719), Mableton, Georgia.

2:30 p.m. The hearing ended and the record was closed.

2:31 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. Kolezynski and a roll-call vote was conducted by President Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Turner – *yes*; Teater – *yes* and Wiesenbahn – *yes*.

2:41 p.m. The Executive Session ended and the meeting was opened to the public.

2:42 p.m.
R-2008-106

Mrs. Gregg moved that the Board adopt the following order in the matter of **Corey Yvette Thompson**, R.Ph. (03-3-23719), Mableton, Georgia.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-071129-024

in the matter of:

COREY YVETTE THOMPSON, R.Ph.

845 Ninth Avenue
Middletown, Ohio 45044
R.Ph. Number 03-3-23719

INTRODUCTION

The matter of Corey Yvette Thompson came for hearing on January 8, 2008, before the following members of the Board: Gregory Braylock, R.Ph. (*presiding*); Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy S. Teater, Public Member; James E. Turner, R.Ph.; and Jerome J. Wiesenhahn, R.Ph.

Corey Yvette Thompson was not represented by counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: None

Respondent's Witness: Corey Yvette Thompson, R.Ph., Respondent

State's Exhibits:

1. Reinstatement Hearing Request letter [11-26-07]
1A-1B. Procedurals
2. State Board of Pharmacy Order in Corey Yvette Thompson, R.Ph. [08-10-06]
3. State Board of Pharmacy Order in Corey Yvette Thompson, R.Ph. [11-08-06]

Respondent's Exhibits:

- A. Letter from Stan J. Sikorski, LPC [12-23-07]; Two National Diagnostics, Inc. Drug Screen Reports [10-09-07 and 12-15-07]
- B. Letter from Lindsay Satterfield, MS, Temp PC [08-28-06]

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 Corey Yvette Thompson has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-060511-074, effective November 8, 2006.

DECISION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Corey Yvette Thompson on May 11, 2006.

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 finds that Corey Yvette Thompson has given satisfactory proof to the Board that she is no longer addicted to the use of controlled substances and hereby approves the reinstatement of the pharmacist identification card, No. 03-3-23719, held by Corey Yvette Thompson to practice pharmacy in Ohio.

Mr. Mitchell seconded the motion and it was approved by the Board: *Aye* – 7.

R-2008-107

The Board next discussed a request from RightSource to be able to maintain only scanned copies of all prescriptions received by their pharmacy and then to destroy all of the original non-controlled substance prescriptions received by their pharmacy 120 days after scanning. After discussion, Mrs. Gregg moved that the request be approvable pending final inspection of the scanning process, including backup procedures. The motion was seconded by Mr. Lipsyc and approved by the Board: *Aye* – 8.

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

After discussion, the Board approved, by consensus changing the May, 2008 meeting dates to May 12-13.

President Braylock appointed Board member Betty Gregg to represent the Board at the Accreditation Council for Pharmacy Education review of Northeastern Ohio University College of Pharmacy.

3:13 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 **Derek James Rhoades**, Intern Applicant, Bellefontaine, Ohio.

5:20 p.m. The hearing ended and the record was closed.

5:27 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. Wiesenhahn and a roll-call vote was conducted by President Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Turner – *yes*; Teater – *yes* and Wiesenhahn – *yes*.

5:47 p.m. The Executive Session ended and the meeting was opened to the public.

R-2008-108

Mr. Turner moved that the Board adopt the following order in the matter of **Derek James Rhoades**, Intern Applicant, Bellefontaine, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number: D-070809-005

in the matter of:

DEREK JAMES RHOADES
3101 Township Road 45
Bellefontaine, Ohio 43311

INTRODUCTION

The matter of Derek James Rhoades came for hearing on January 8, 2008, before the following members of the Board: Gregory Braylock, R.Ph. (*presiding*); Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy S. Teater, Public Member; James E. Turner, R.Ph.; and Jerome J. Wiesenbahn, R.Ph.

Derek James Rhoades was not represented by counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses: Todd Knauss, Ohio State Board of Pharmacy
 Derek James Rhoades, Respondent
 Janice Elaine Rhoades
 Robert William McCurdy, R.Ph.

Respondent's Witnesses: None

State's Exhibits:

1. Proposal to Deny/Notice of Opportunity For Hearing letter [08-09-07]
- 1A-1C. Procedurals
2. Application for Pharmacy Intern Registration Submitted with Attachment by Derek James Rhoades [03-20-07]
3. Two Notarized Statements of Derek Rhoades [08-06-07]
4. Complaint, State of Ohio vs Derek J. Rhoades, Case No. CRB0600253B, Hardin County Municipal Court [04-02-06]; Entry (Plea and Sentencing) [04-03-06]
5. Complaint, State of Ohio vs Derek J. Rhoades, Case No. CRB0600253A, Hardin County Municipal Court [04-02-06]; Entry (Plea and Sentencing) [05-23-06]
6. Logan County Sheriff's Office Official Report [06-02-06]
- 6A. Complaint, State of Ohio vs Derek J. Rhoades, Case No. 06 CRB 873, Bellefontaine Municipal Court, County of Logan [06-03-06]; Order and Judgment Entry of Conviction [09-18-06]
- 6B. Judgment Entry/Sentencing, State of Ohio vs. Derek J. Rhoades, Case No. CR 06-06-0112, Logan County Common Pleas Court [12-22-06]
7. Statement of Allen Hadley [05-29-06]
8. Letter from Michael D. Schafer, Ph.D., LICDC [11-27-07]

Respondent's Exhibits:

- A. Ohio Northern University Official Academic Transcript [12-27-07]
- B-C. Two Letters of Support [11-29-07 and 12-03-07]
- D. Record of Campus Involvement [not dated]
- E. Updated Personal Statement [not dated]

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Derek James Rhoades applied to the Board for registration as an intern in the State of Ohio on March 20, 2007.

- (2) Derek James Rhoades has indicated to Board agents that he is addicted to alcohol and drugs. Such admission indicates that Derek James Rhoades falls within the ambit of Sections 3719.121 and 4729.16 of the Ohio Revised Code and Rule 4729-5-04 of the Ohio Administrative Code.
- (3) Derek James Rhoades was, on or about April 3, 2006, convicted in the Hardin County Municipal Court of Drug Abuse, a minor misdemeanor, in violation of Section 2925.11 of the Ohio Revised Code. State of Ohio vs. Derek J. Rhoades, Case No. CRB 06-00253B. Derek James Rhoades was fined \$150.00 and his driver's license was suspended for 6 months. Such conviction indicates that Derek James Rhoades has been convicted of violating a provision of state drug laws and not of good moral character and habits within the meaning of Rule 4729-5-04 of the Ohio Administrative Code.
- (4) Derek James Rhoades was, on or about May 23, 2006, convicted in the Hardin County Municipal Court of Possession of Drug Paraphernalia, a misdemeanor of the first degree, in violation of Section 2925.14 of the Ohio Revised Code. State of Ohio vs. Derek J. Rhoades, Case No. CRB 06-00253A. Derek James Rhoades was fined \$200.00, sentenced to 5 days of jail (4 suspended and 16 hours community service in lieu of 1 day of jail), and placed on probation.
- (5) Derek James Rhoades was, on or about September 18, 2006, convicted in the Bellefontaine Municipal Court of Underage Consumption of Alcohol, a misdemeanor of the first degree in violation of Section 4301.69 of the Ohio Revised Code. State of Ohio vs. Derek J. Rhoades, Case No. 06 CRB 873. Derek James Rhoades was fined \$100.00.
- (6) Derek James Rhoades did, on or about July 11, 2007, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Derek James Rhoades indicated to a Board agent that he had previously reported all alcohol and/or drug-related incidents in his past; yet, Derek James Rhoades omitted a material array of incidents that occurred during the week of March 27, 2005. During such time, Derek James Rhoades engaged in a series of incorrigible acts involving alcohol, marijuana, and deceit during a high school trip. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.
- (7) Derek James Rhoades was, on or about December 22, 2006, convicted in the Common Pleas Court of Logan County, Ohio, of Criminal Trespass, a misdemeanor of the fourth degree, in violation of Section 2911.21 of the Ohio Revised Code. State of Ohio vs. Derek J. Rhoades, Case No. CR 06-06-0112. Derek James Rhoades was sentenced to two years probation, and ordered to pay attorney's fees, costs, and a \$250.00 fine. An accomplice has admitted to a Board agent that Derek James Rhoades broke into his ex-girlfriend's home during the night with purpose to steal prescription drugs from the home.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraph (6) of the Findings of Fact constitutes being guilty of gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraph (6) 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 paragraphs (3) and (4) of the Findings of Fact constitute being 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 paragraphs (3) through (7) of the Findings of Fact constitute 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 (2) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs as provided in paragraph (D) of Rule 4729-5-04 of the Ohio Administrative Code.

DECISION OF THE BOARD

Pursuant to Sections 4729.11 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 pharmacy intern in Ohio and, therefore, denies the Pharmacy Intern Registration Application submitted by Derek James Rhoades on or about March 20, 2007.

Further, Derek James Rhoades may not reappear prior to the August 2008 Board meeting to request the Board's reconsideration, pursuant to Ohio Revised Code Chapter 119. The Board will only consider the issuance of a certificate of registration or an identification card to practice as a pharmacy intern in Ohio if the following conditions have been met:

- (A) Derek James Rhoades 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) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, upon signing, mail a copy of the 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) Derek James Rhoades 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) Derek James Rhoades must provide, at the reinstatement petition hearing, documentation of the following:
 - (1) Compliance with the contract required 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 terms of this Order.
- (D) Upon such time as the Board may consider reinstatement, Derek James Rhoades 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.

The motion was seconded by Mr. Wiesenhahn and approved by the Board: *Aye* – 7.

5:52 p.m. The Board recessed for the day.

Wednesday, January 9, 2008

8:00 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:

Nathan S. Lipsyc, R.Ph., *Vice-President*; Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; Dorothy S. Teater, Public Member; James E. Turner, R.Ph.; and Jerome J. Wiesenhahn, R.Ph.

8:05 a.m. Gregory Braylock, R.Ph., *President*, arrived.

R-2008-109 After discussion, Mrs. Gregg moved that the Board minutes of December, 2007 be approved as amended. The motion was seconded by Mr. Wiesenhahn and approved by the Board: *Aye* – 8.

After a discussion about the National Association of Boards of Pharmacy Annual Meeting in May, the consensus of the Board was that Mr. Braylock would serve as the Board's voting delegate at the meeting and Mrs. Gregg would serve as the Board's alternate voting delegate.

Mr. Braylock presented a brief report on the Nursing Board's Committee on Prescriptive Governance and said there would be a more extensive report in February.

Mrs. Droz provided the Board with an update on the Prescription Drug Monitoring Program.

Mr. Mitchell discussed the Medical Board Physician Assistant Policy Committee report with the Board.

8:58 a.m. The Board recessed briefly.

9:16 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 **Cindy Donner Malher**, R.Ph. (03-1-26042), Fort Wayne, Indiana.

9:57 a.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 Mr. Lipsyc and a roll-call vote was conducted by President Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Pasquale – *yes*; Turner – *yes*; Teater – *yes* and Wiesenbahn – *yes*.

10:15 a.m. The Executive Session ended and the meeting was opened to the public.

R-2008-110 Mr. Turner moved that the Board adopt the following order in the matter of **Cindy Donner Malher**, R.Ph. (03-1-26042), Fort Wayne, Indiana.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-070809-003

in the matter of:

CINDY DONNER MALHER, R.Ph.
9935 Northbrook Valley Drive, Apt. 3
Fort Wayne, Indiana 46825
R.Ph. Number 03-1-26042

INTRODUCTION

The matter of Cindy Donner Malher came for hearing on January 9, 2008, before the following members of the Board: Gregory Braylock, R.Ph. (*presiding*); Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; Dorothy S. Teater, Public Member; James E. Turner, R.Ph.; and Jerome J. Wiesenbahn, R.Ph.

Cindy Donner Malher was not present nor was she represented by counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: John C. Whittington, D.O., R.Ph.,
Ohio State Board of Pharmacy

Respondent's Witnesses: None

State's Exhibits:

1. Notice of Opportunity For Hearing letter [08-09-07]
1A-1F. Procedurals
- 2-2G. Trihealth Pharmacy "Live" Orders by Pharmacist [10-22-06 to 11-04-06]
3. Compilation of Respondent's Residential Addresses from November 1977 to June 2007
4. Compilation of Respondent's Employers from March 2004 to June 2007
5. Journal/Judgment Entry, Liberty Twp vs Cindy R. Donner, Case No. CRB 0500043, Butler County Court, Area II [03-16-05]; Journal Entry [03-16-05]; Two Computer Screen Print Outs Referencing Restitution Payment [12-06-07]

6. Two Renewal Applications for Pharmacist License of Cindy Donner Malher for periods of 09-15-05 to 09-15-06 and 09-15-06 to 09-15-07

Respondent's Exhibits: None

FINDINGS 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 the following to be fact:

- (1) Records of the State Board of Pharmacy indicate that Cindy Donner Malher was originally licensed by the State of Ohio as a pharmacist on February 3, 2004, pursuant to reciprocity, and is currently licensed to practice pharmacy in the State of Ohio.
- (2) Cindy Donner Malher did, on or about October 23, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (3) Cindy Donner Malher did, on or about October 24, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (4) Cindy Donner Malher did, on or about October 25, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (5) Cindy Donner Malher did, on or about October 26, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (6) Cindy Donner Malher did, on or about October 27, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

- (7) Cindy Donner Malher did, on or about October 30, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (8) Cindy Donner Malher did, on or about October 31, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (9) Cindy Donner Malher did, on or about November 1, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (10) Cindy Donner Malher did, on or about various and unknown dates in 2006, fail to notify the Board of her change(s) of address, to wit: Cindy Donner Malher has changed her residence to at least four cities, but failed to notify the Board within thirty days after the date of any change. Such conduct is in violation of Rule 4729-5-06(A) of the Ohio Administrative Code.
- (11) Cindy Donner Malher did, on or about various and unknown dates in 2006, fail to notify the Board of her change(s) of place(s) of employment or the principal place where she practices pharmacy, to wit: Cindy Donner Malher changed employers several times, but did not notify the Board within thirty days after the date of any change. Such conduct is in violation of Rule 4729-5-06(B) of the Ohio Administrative Code.
- (12) Cindy Donner Malher did, on or about September 26, 2005, and again on November 6, 2006, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Cindy Donner Malher indicated on her pharmacist license renewal application that she had not been charged with a crime when in fact she had been convicted of Passing Bad Checks in violation of Section 2913.11 of the Ohio Revised Code, a misdemeanor of the first degree, on March 16, 2005. Liberty Twp vs Cindy R. Donner, Case No. CRB 0500043, Butler County Court, Area II. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraph (12) of the Findings of Fact constitutes being guilty of gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraphs (2) through (9) and (12) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

- (3) The State Board of Pharmacy concludes that paragraphs (2) through (11) 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.
- (4) The State Board of Pharmacy concludes that paragraph (12) of the Findings of Fact constitutes being guilty of committing fraud, misrepresentation, or deception in applying for or securing a license or identification card issued by the Board under Chapter 4729. of the Revised Code as provided in Division (A)(10) 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 takes the following actions in the matter of Cindy Donner Malher:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-1-26042, held by Cindy Donner Malher and such suspension is effective as of the date of the mailing of this Order.
 - (1) Cindy Donner Malher, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
 - (2) Cindy Donner Malher, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return her identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.
- (B) Further, after five years from the effective date of this Order the Board will consider reinstatement provided that Cindy Donner Malher personally appears before the State Board of Pharmacy.

Upon such time as the Board may consider reinstatement, Cindy Donner Malher 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.

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

10:16 a.m. Mr. Wiesenhahn 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. The motion was seconded by Mr. Mitchell and a roll-call vote was conducted by President Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Pasquale – *yes*; Turner – *yes*; Teater – *yes* and Wiesenhahn – *yes*.

11:29 a.m. The Executive Session ended and the meeting was opened to the public.

11:37 a.m. Mrs. Gregg moved that the Board receive Per Diem as follows:

<u>PER DIEM</u>	<u>12/14/07</u>	<u>12/19/07</u>	<u>1/07/08</u>	<u>1/08/08</u>	<u>1/9/08</u>	<u>Total</u>
Braylock	1	-	1	1	1	4
Gregg	-	-	-	1	1	2
Kolezynski	1	-	-	1	1	3
Lipsyc	-	-	-	1	1	2
Mitchell	-	-	-	1	1	2
Pasquale	-	1	-	1	1	3
Teater	-	-	-	1	1	2
Turner	-	-	-	1	1	2
Wiesenhahn	-	-	-	1	1	2

Mrs. Teater seconded the motion and it was approved by the Board: *Aye* – 8.

11:38 a.m. Mr. Lipsyc moved that the meeting be adjourned. The motion was seconded by Mr. Turner and approved by the Board: *Aye* – 8.

<p>The Ohio State Board of Pharmacy approved these Minutes February 5, 2008</p>
