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Minutes of the August 4-6, 2008 Meeting of the Ohio State Board of Pharmacy

Monday, August 4, 2008

10:00 a.m. The Ohio State Board of Pharmacy convened in Room South B and C, 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., *President*; Elizabeth I. Gregg, R.Ph., *Vice-President*; Donald M. Casar, R.Ph.; Barton G. Kaderly, Public Member; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph.; Heather L. Pasquale, R.Ph.; and Jerome J. Wiesenbahn, R.Ph.

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

10:01 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. Kolezynski and a roll-call vote was conducted by President Lipsyc as follows: Casar – *yes*; Gregg – *yes*; Kaderly – *yes*; Kolezynski – *yes*; Lange – *yes*; Pasquale – *yes*; and Wiesenbahn – *yes*.

10:55 a.m. The Executive Session ended and the meeting was opened to the public.

R-2009-014 Mrs. Gregg moved that the request for a continuance from **Joel L. Levitan**, R.Ph. (03-2-09419) Sylvania, Ohio be approved. The motion was seconded by Mr. Wiesenbahn and approved by the Board: *Aye* – 7.

R-2009-015 Mrs. Gregg moved that the request to amend his Board Order of December 4, 2007 from **Hemin Hasmukh Patel**, R.Ph. (03-1-26038) Hilliard, Ohio be denied. The motion was seconded by Ms. Pasquale and approved by the Board: *Aye* – 7.

R-2009-016 Mr. Casar moved that the request for an amendment to his Board Order of October 9, 2007 from **Richard M. Magliano**, R.Ph. (03-2-17865) Loveland, Ohio be approved. The motion was seconded by Ms. Lange and approved by the Board: *Aye* – 6. Mr. Wiesenbahn recused himself from the vote.

R-2009-017 Mrs. Gregg moved that a request for a continuance from **Ronald Heath Stevens**, R.Ph. (03-3-21936) Stone Creek, Ohio be denied. The motion was seconded by Mr. Casar and approved by the Board: *Aye* – 7.

- 10:57 a.m. The Board recessed briefly.
- 11:07 a.m. A report from a student attendee of the University of Utah School on Alcoholism and Other Drug Dependencies was presented to the Board.
- Mrs. Droz discussed the Ohio Automated RX Reporting System (OARRS) report with the Board.
- Mr. Keeley presented the legislative report.
- 12:15 p.m. The Board recessed for lunch.
- 1:30 p.m. The Board reconvened with the following members present:
- Nathan S. Lipsyc, R.Ph., *President*; Elizabeth I. Gregg, R.Ph., *Vice-President*; Donald M. Casar, R.Ph.; Barton G. Kaderly, Public Member; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph.; Heather L. Pasquale, R.Ph.; and Jerome J. Wiesenhahn, R.Ph.
- 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 Rhodes**, Bellefontaine, Ohio.
- 2:34 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 Mr. Kolezynski and a roll-call vote was conducted by President Lipsyc as follows: Casar – *yes*; Gregg – *yes*; Kaderly – *yes*; Kolezynski – *yes*; Lange – *yes*; Pasquale – *yes*; and Wiesenhahn – *yes*.
- 2:44 p.m. The Executive Session ended and the meeting was opened to the public.
- 2:45 p.m.
R-2009-018 Mrs. Gregg moved that the order in the matter of **Derek James Rhodes**, Bellefontaine, Ohio be adopted and that he be given early notification.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-080212-038

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 August 4, 2008, before the following members of the Board: Nathan S. Lipsyc, R.Ph. (*presiding*); Donald M. Casar, R.Ph.; Elizabeth I. Gregg, R.Ph.; Barton G. Kaderly, Public Member; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph.; Heather L. Pasquale, R.Ph.; and Jerome J. Wiesenhahn, 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: Derek James Rhoades, Respondent
David H. Kinder

Respondent's Witnesses: None

State's Exhibits:

1. Hearing Request Letter from Derek J. Rhoades [02-09-08]
1A-B. Procedurals
2. State Board of Pharmacy Order in re Derek James Rhoades [02-06-08]

Respondent's Exhibits:

- A. Support Group Attendance Records [02-10-08 to 07-29-08]
- B. First Lab OHPRO Test History Report [03-21-08 to 07-14-08]
- C. PRO Pharmacist's Recovery Contract for Derek James Rhoades [02-19-08]
- D. Letter from Glen Strobel, Ph.D. [07-26-08]
- E. Ohio Northern University Official Academic Transcript For Derek James Rhoades [05-20-08]

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds that Derek James Rhoades has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-070809-005, effective February 6, 2008.

DECISION OF THE BOARD

Pursuant to Section 4729.11 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the Application for Pharmacy Intern Registration submitted by Derek James Rhoades on March 20, 2007, subject to the following condition:

Derek James Rhoades must continue with, and abide by, the terms of his current PRO Pharmacists Recovery Contract.

Derek James Rhoades is hereby advised that the Board may, at any time, take action for any violation of his current PRO contract.

The motion was seconded by Ms. Pasquale and approved by the Board: *Aye* – 7.

2:47 p.m. The Board recessed briefly.

3:02 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 **Ronald Heath Stevens**, R.Ph. (03-3-21936) Stone Creek, Ohio.

3:20 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 Mr. Casar and a roll-call vote was conducted by President Lipsyc as follows: Casar – *yes*; Gregg – *yes*; Kaderly – *yes*; Kolezynski – *yes*; Lange – *yes*; Pasquale – *yes*; and Wiesenbahn – *yes*.

3:30 p.m. The Executive Session ended and the meeting was opened to the public.

R-2009-019

After votes were taken in public session, the Board adopted the following order in the matter of **Ronald Heath Stevens**, R.Ph. (03-3-21936) Stone Creek, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-060418-069

in the matter of:

RONALD H. STEVENS, R.Ph.

201 West Jefferson Street
Stone Creek, Ohio 43840

R.Ph. Number 03-3-21936

INTRODUCTION

The matter of Ronald H. Stevens came for hearing on August 4, 2008, before the following members of the Board: Nathan S. Lipsyc, R.Ph. (*presiding*); Donald M. Casar, R.Ph.; Elizabeth I. Gregg, R.Ph.; Barton G. Kaderly, Public Member; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph.; Heather L. Pasquale, R.Ph.; and Jerome J. Wiesenhahn, R.Ph.

Ronald H. Stevens was not present nor was he represented by counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses: Thomas M. Miksch, Ohio State Board of Pharmacy
Michael Quigley, R.Ph.

Respondent's Witnesses: None

State's Exhibits:

1. Reinstatement Hearing Request letter from Ronald H. Stevens [04-04-06] 1A-1N. Procedurals
2. State Board of Pharmacy Order In Re Ronald H. Stevens [04-14-05]
3. Hearing Continuance Request Letter from Ronald Stevens [09-25-06]; Memorandum from Agent Thomas Miksch to David Rowland [10-02-06]; Docket Sheets, Ronald H. Stevens vs. Teri E. Stevens, Case No. DR-2006-03-0748, Summit County Common Pleas Court [03-07-06 to 03-04-08]
4. E-mail from Ronald H. Stevens to David Rowland [01-30-07]
5. Hearing Continuance Request Letter from Ronald H. Stevens [05-15-07]
6. Hearing Continuance Request Letter from Ronald H. Stevens [11-26-07]; Hearing Continuance Request Letter from Ron Stevens [11-30-07]
7. Hearing Continuance Request Letter from Ronald H. Stevens [03-17-08]
8. Notarized Statement of Michael Quigley, R.Ph. [03-26-08]
9. Hearing Continuance Request Letter from Ronald H. Stevens [07-26-08]

Respondent's Exhibits: None

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 Ronald H. Stevens has not complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-041006-026, effective April 14, 2005, nor has he demonstrated satisfactory proof to the Board that he is no longer addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.

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 denies the reinstatement of the pharmacist identification card, No. 03-3-21936, held by Ronald H. Stevens to practice pharmacy in Ohio. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Ronald H. Stevens may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during suspension.

Further, after August 2016, the Board will consider any petition filed by Ronald H. Stevens 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 condition has been met:

Ronald H. Stevens must show compliance with the terms of his Board Order of April 14, 2005.

Jerome Wiesenhahn moved for the Findings of Fact and the Decision of the Board; Deborah Lange seconded the motion. Motion passed: *Aye – 7; Nay – 0.*

Mr. McMillen discussed the Licensing Report with the Board.

R-2009-020 The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-11 (Responsible Person) requesting that **Mahmoud Mohammed Rifai**, R.Ph. (03-1-27678) Waynesville, Ohio be permitted to be the responsible person for the following sites:

Dayton Pharmacy , Dayton, Ohio	(license pending)
SaveMart , Dayton, Ohio	(02-1680850)

After discussion, Mr. Kolezynski moved that the Board approve the request for 90 days. The motion was seconded by Mr. Casar and approved by the Board: *Aye – 7; Nay – 0.*

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

R-2009-021 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 Ms. Pasquale and approved by the Board: *Aye – 7.*

R-2009-022 The Board discussed Florida's policy concerning reciprocity. Ms. Lange moved that Ohio enact a matching policy to allow those who received their pharmacist's license by examination in Florida, on or after, June 26, 1979 to be eligible for reciprocity to Ohio. Mrs. Gregg seconded the motion and it was approved by the Board: *Aye – 6; Nay – 1.*

4:33 p.m. The Board recessed for the day.

Tuesday, August 5, 2008

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:

Nathan S. Lipsyc, R.Ph., *President*; Elizabeth I. Gregg, R.Ph., *Vice-President*; Gregory Braylock, R.Ph.; Donald M. Casar, R.Ph.; Barton G. Kaderly, Public Member; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph.; Heather L. Pasquale, R.Ph.; and Jerome J. Wiesenbahn, R.Ph.

R-2009-023 After discussion, Mrs. Gregg moved that the Board minutes of July 7-8, 2008, be approved as amended. Mr. Braylock seconded the motion and it was approved by the Board: *Aye* – 8.

R-2009-024 Mr. Benedict and Mr. Reed discussed the Board's vehicle use policy for its agents with the committee. Mr. Casar moved that the following policy be adopted.

Vehicle Use Policy

As Adopted August 5, 2008

The Ohio State Board of Pharmacy, hereinafter referred to as the "Board," considers its leased vehicles as tools used toward its law enforcement and administrative objectives. As such, the use of these vehicles will maximize those objectives as well as restrict all other uses. In instances where the specific use of an automobile becomes questionable, the burden of justification lies with the Board employee. The safe and efficient use of Board vehicles is the guiding factor for the standards in this policy. Any violation of this policy may be grounds for discipline and could result in termination of employment.

STANDARDS

General:

The Executive Director or designee shall be responsible for the assignment and termination of assignment of vehicles to any employee. All Board employees who travel on state business shall possess a valid Ohio driver's license.

Authorized Use:

- Travel between the places where the vehicle is headquartered and where official business is performed.
- When on official travel status, between the place of state business and the place of temporary lodging.
- When on official travel status, between either of the above places and places to obtain meals; places to obtain medical assistance (including pharmacy); places of worship; barber shops or hair salons; cleaning establishments and similar places required to sustain the health, welfare or continued efficient performance of the employee.
- Transport of other officers, employees, or guests of the state when they are on official state business.
- Out-of-state travel when authorized by the Executive Director or designee.

Unauthorized Use:

- Any use for personal purpose other than commuting, which has been authorized as specified above.
- Travel or tasks that are beyond the vehicle's rated capability.
- The transport of family, friends, associates or other persons who are not employees of the state or serving the interests of the state.
- Transport of hitchhikers.

- Transport of any item or equipment projecting from the side, front, or rear of the vehicle in a way that constitutes an obstruction to safe driving, or a hazard to pedestrians or other vehicles.
- Operating a state vehicle while under the influence of alcohol or drugs. No alcoholic beverages may be possessed in the cabin of the vehicle at any time.

Responsibilities:

- All Board employees shall comply with all applicable state and local traffic and parking laws.
- Employees shall be personally responsible for any criminal or civil penalty incurred as the result of a violation.
- All drivers and passengers shall wear seat belts.
- Smoking in the state vehicle is prohibited.
- All Board employees authorized to use a state vehicle shall be responsible for their appropriate operation, maintenance, and record keeping as required by policy and applicable laws and rules set forth by the Department of Administrative Services (DAS).
- Board employees shall not operate any motor vehicle leased by the state while physically or mentally impaired.
- If a Board employee is assigned a state vehicle, that vehicle must be used for all state business unless prior approval from a supervisor is obtained.

Purchase of Fuel/Service/Repair of Assigned Vehicles:

- Fleet management (DAS) shall issue a credit card to the Board employee.
- Board employees shall use the credit card only for the specifically assigned Board vehicles.
- Board employees shall, when purchasing fuel or service, ensure that the appropriate information is placed on the credit card receipt pursuant to DAS rules.
- All credit card receipts shall be forwarded to the Board office and DAS Fleet Management pursuant to DAS submission schedules.

Vehicle Maintenance:

- All Board employees who are assigned a leased vehicle shall be responsible for keeping the car neat and clean. The interior of the vehicle shall be kept free of trash, dirt and debris. Beverage spills and stains that occur shall be cleaned immediately.
- Board employees are authorized to have a leased vehicle washed every two weeks during summer months and once weekly during winter months (if needed).
- All Board vehicles are subject to inspection at any time by DAS Fleet Management or the Compliance Supervisor or Assistant Executive Director.
- It is the responsibility of the assigned driver to ensure his/her vehicle is serviced according to schedule.
- It is the responsibility of the assigned driver to ensure that defects/deficiencies are reported and arrangements are made for repair in a timely manner.
-

Vehicle Accident Reporting Procedures:

- It is the driver's responsibility to take or ensure action is taken if he/she is capable of doing so.
- The Board employee shall notify the Ohio State Highway Patrol and/or a local law enforcement agency having jurisdiction of the accident.
- Immediately or as soon as practical, the Board employee shall notify the Compliance Supervisor or Assistant Executive Director and dictate a detailed preliminary memorandum of the circumstances surrounding the accident. The memorandum shall include sufficient information for adequate notification of the chain-of-command.
- If the Board employee is injured and able to communicate, the employee shall request the investigating law enforcement agency contact the Compliance Supervisor or Assistant Executive Director.
- If the Board employee is able to do so, he/she shall complete and forward the following reports within 24 hours or by the close of business the first day of return to duty:

1. A complete memorandum detailing all actions and observations of the accident, directed to the Executive Director via chain-of-command.
 2. A Department of Administrative Services, Office of Risk Management Employee Automobile Accident Report (ADM 4702).
 3. A Department of Administrative Services, Office of Risk Management Motor Vehicle Crash Report (ADM 4708).
- The Board employee shall summon assistance to any injured person(s).
 - The Board employee shall not discuss fault regarding the accident, nor limits of insurance coverage with the other parties involved.
 - The Board employee shall not discuss the details of the accident with anyone except the investigating law enforcement officer and appropriate Board and DAS personnel.
 - The Board employee shall obtain names and addresses of all witnesses and person(s) involved.
 - The Board employee shall obtain the name and address of the other person's insurance company.
 - The Board employee shall obtain the license number, make, and year of the other vehicle(s) involved.

Vehicle Damage/Theft & Vandalism Procedures:

- The Board employee assigned to a vehicle shall take all necessary action to reasonably ensure the security of the vehicle at all times.
- It shall be the Board employee's responsibility to take appropriate action in the event that a Board-leased vehicle has been subjected to theft, damage or vandalism.
- The Board employee shall contact the Ohio State Highway Patrol and/or a law enforcement agency of appropriate jurisdiction, provide required information and ensure an offense report is completed.
- It is the Board employee's responsibility to obtain a copy of the above report within 24 hours or when it is available from the law enforcement agency.
- The Board employee shall immediately notify the Compliance Supervisor or Assistant Executive Director of the incident.
- The Board employee's supervisor shall ensure the safety of the employee, and coordinate transportation and/or overnight lodging if required.
- By close of business of the first day of duty, the Board employee shall prepare and submit a memorandum to the Compliance Supervisor or Assistant Executive Director detailing the circumstances and observations associated with the occurrence.

Mr. Braylock seconded the motion and it was approved by the Board: *Aye – 7; Nay – 1.*

President Lipsyc appointed Mr. Braylock, Mr. Kolezynski, and Mr. Wiesenbahn to attend the University of Cincinnati White Coat Ceremony on September 23, 2008 as the Board's representatives. Mr. Kolezynski will speak for the Board.

Mr. Braylock said there was no Nursing Board Committee on Prescriptive Governance meeting this month.

R-2009-025

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:

St. John West Shore Hospital , Westlake, Ohio	(02-0956300)
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. Wiesenbahn and approved by the Board: *Aye – 8.*

8:49 a.m. The Board recessed briefly.

9:05 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 **Thomas Jefferson Hutton**, R.Ph. (03-1-11067) Toledo, Ohio.

11:58 a.m. The hearing was continued until a later date.

The Board recessed for lunch.

1:30 p.m.

R-2009-026

The following candidates for licensure by reciprocity met with members of the Board in Room South A, 31st Floor of the Vern Riffe Center. The candidates introduced themselves to the Board, and then participated in a discussion of pharmacy laws and rules with Mr. McMillen.

Kandace Violet Anich	<i>Virginia</i>	Laura Ann Molique	<i>Kentucky</i>
Danielle W. Backers	<i>Kentucky</i>	Claire Victoria Murphy	<i>Missouri</i>
Lynn M. Black	<i>Rhode Island</i>	Elizabeth Anne Neuner	<i>Missouri</i>
Daniel P. Brinkman	<i>Arizona</i>	Lisa M. Ohara	<i>Indiana</i>
Aaron Wade Buterbaugh	<i>Virginia</i>	Glen Francis Palmer	<i>New York</i>
Michael Coleman	<i>Pennsylvania</i>	Mark Allen Pilkington	<i>Illinois</i>
Bridgette Lynn Daniel	<i>North Carolina</i>	Craig Ruffin	<i>New Jersey</i>
Ashley Dean	<i>Virginia</i>	Paul Bernard Schmansky	<i>Michigan</i>
Ryan Joseph Fennick	<i>South Carolina</i>	Melissa Goode Spencer	<i>Louisiana</i>
Lizbeth Anne Hansen	<i>Wisconsin</i>	Eric Stephens	<i>Kentucky</i>
Mari Garrett Leahy	<i>Illinois</i>	Adele M. Storm	<i>West Virginia</i>
David Joseph Leuck	<i>Indiana</i>	Gregory Glenn Vannoy	<i>Michigan</i>
Jeanelle R. Lucas	<i>Michigan</i>	Kirtina Spengler West	<i>Indiana</i>
Anthony W. Makarich	<i>Texas</i>	Derick Roy Young	<i>Maryland</i>

2:04 p.m. The Board reconvened in Room East B with all members present.

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 **Michael Anthony Biaglow**, R.Ph. (03-2-24782) Toledo, Ohio.

3:15 p.m. The hearing ended and the record was closed. The Board recessed briefly.

3:17 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 Lipsyc as follows: Braylock – *yes*; Casar – *yes*; Gregg – *yes*; Kaderly – *yes*; Kolezynski – *yes*; Lange – *yes*; Pasquale – *yes*; and Wiesenbahn – *yes*.

3:47 p.m. The Executive Session ended and the meeting was opened to the public.

R-2009-027

After votes were taken in public session, the Board adopted the following order in the matter of **Michael Anthony Biaglow**, R.Ph. (03-2-24782) Toledo, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-080514-044

in the matter of:

MICHAEL ANTHONY BIAGLOW, R.Ph.

15957 Prospect Road
Strongsville, Ohio 44149

R.Ph. Number 03-2-24782

INTRODUCTION

The matter of Michael Anthony Biaglow came for hearing on August 5, 2008, before the following members of the Board: Nathan S. Lipsyc, R.Ph. (*presiding*); Gregory Braylock, R.Ph.; Donald M. Casar, R.Ph.; Elizabeth I. Gregg, R.Ph.; Barton G. Kaderly, Public member; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph.; Heather L. Pasquale, R.Ph.; and Jerome J. Wiesenbahn, R.Ph.

Michael Anthony Biaglow was represented by Kenneth A. Schuman. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: Paul Kover, Ohio State Board of Pharmacy

Respondent's Witness: Michael Anthony Biaglow, R.Ph., Respondent

State's Exhibits:

1. Notice of Opportunity For Hearing letter [05-14-08]
1A-1C. Procedurals
2. Letter from Paul S. Freedman, M.D. to Suzanne Schloss [01-18-08]; Drug Screen Report [01-14-08]

Respondent's Exhibits:

- A. Southwest General Health Center Letter of Assessment re Michael Biaglow [01-31-08]
- B. Letter from Lisa M. Meckley and Robert E. Larkin to Stacey VanZale [02-22-08]
- C. Southwest General Health Center Alcohol and Drug Education Program Certificate for Michael Biaglow [02-22-08]
- D. Drug Screen Flowsheet for Michael Biaglow [02-22-08]
- E. Letter from Suzanne M. Schloss to Michael Biaglow [07-29-08]
- F. Support Group Attendance Records [02-05-08 to 07-24-08]
- G. Letter from Stacey VanZale Zorska to William T. Winsley [05-30-08]
- H-K. Four Letters of Support [01-23-08 to 06-25-08]
- L. alzheimer's association Certificate of Attendance for Tony Biaglow [07-17-08]
- M. Letter from Kathleen A. Smyth to Michael Biaglow [07-17-08]

FINDINGS OF FACT

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

- (1) Records of the State Board of Pharmacy indicate that Michael Anthony Biaglow was originally licensed by the State of Ohio as a pharmacist on September 17, 2001, by examination, and is currently licensed to practice pharmacy in Ohio.
- (2) Michael Anthony Biaglow did, on or about January 14, 2008, and on dates preceding, knowingly possess or use a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Michael Anthony Biaglow possessed and used marijuana, a Schedule I Controlled Substance, and benzodiazepines, a Schedule IV Controlled Substance, when Michael Anthony Biaglow did not have a legitimate medical purpose nor a valid prescription for the drugs. While practicing pharmacy at Southwest General Hospital, Michael Anthony Biaglow was subjected to a random drug screen which Michael Anthony Biaglow tested positive for THC and benzodiazepines. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (3) Michael Anthony Biaglow is abusing drugs and/or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Michael Anthony Biaglow has admitted to Board agents that he abuses drugs due to stress and anxiety; and, due to working conditions Michael Anthony Biaglow has had problems sleeping, and Michael Anthony Biaglow had begun to self-medicate for these conditions. Further, Michael Anthony Biaglow has admitted to stealing controlled substances from a past employer, a hospital pharmacy. Such conduct indicates that Michael Anthony Biaglow is within the ambit of Sections 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraph (2) 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 (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 (3) of the Findings of Fact constitutes abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.
- (4) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. 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 hereby suspends for one year the pharmacist identification card, No. 03-2-24782 held by Michael Anthony Biaglow and such suspension is effective as of the date of the mailing of this Order.

Further, the Board suspends the suspension and places Michael Anthony Biaglow's identification card on probation for three years with the following conditions:

- (A) 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 two years.
 - (1) 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.
 - (2) 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.
 - (3) The intervener/sponsor shall submit reports to the Board, 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.
 - (4) Attendance is required a minimum of at least one time per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
- (B) 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 five hundred dollars (\$500.00) on Michael Anthony Biaglow 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.
- (C) Other terms of probation are as follows:
 - (1) Michael Anthony Biaglow must not violate the drug laws of Ohio, any other state, or the federal government.
 - (2) Michael Anthony Biaglow must abide by the rules of the State Board of Pharmacy.
 - (3) Michael Anthony Biaglow must comply with the terms of this Order.
 - (4) Michael Anthony Biaglow's license is deemed to be not in good standing until successful completion of the probationary period.
 - (5) 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.

Michael Anthony Biaglow 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.

Elizabeth Gregg moved for Findings of Fact; Heather Pasquale seconded the motion. Motion passed: *Aye* – 8; *Nay* – 0.

Elizabeth Gregg moved for Conclusions of Law; Heather Pasquale seconded the motion. Motion passed: *Aye* – 8; *Nay* – 0.

Gregory Braylock moved for Action of the Board; Donald Casar seconded the motion. Motion passed: *Aye* – 8; *Nay* – 0.

R-2009-028 Mr. Braylock moved that the settlement offer in the matter of **Hannan T. Laikos**, R.Ph. (03-3-17097) Wadsworth, Ohio, be accepted. The motion was seconded by Ms. Lange and approved by the Board: *Aye* – 7; *Nay* – 1.

3:54 p.m. The Board recessed for the day.

Wednesday, August 6, 2008

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

R-2009-029 Mr. Keeley presented the proposed rule changes to the Board. After discussion, Mrs. Gregg moved that the rules be approved for filing as amended. The motion was seconded by Ms. Lange and it was approved by the Board: *Aye* – 8.

9:42 a.m. Ms. Pasquale left the meeting.

9:42 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. Kolezynski and a roll-call vote was conducted by President Lipsyc as follows: Braylock – *yes*; Casar – *yes*; Gregg – *yes*; Kaderly – *yes*; Kolezynski – *yes*; Lange – *yes*; and Wiesenbahn – *yes*.

10:32 a.m. The Executive Session ended and the meeting was opened to the public.

Mr. Kolezynski moved that the Board receive Per Diem as follows:

<u>PER DIEM</u>	<u>08/04</u>	<u>08/05</u>	<u>08/06</u>	<u>Total</u>
Braylock	-	1	1	2
Casar	1	1	1	3
Gregg	1	1	1	3
Kaderly	1	1	1	3
Kolezynski	1	1	1	3
Lange	1	1	1	3
Lipsyc	1	1	1	3
Pasquale	1	1	1	3
Wiesenbahn	1	1	1	3

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

10:33 a.m. Mr. Braylock moved that the meeting be adjourned. The motion was seconded by Mr. Kolezynski and approved by the Board: *Aye* – 7.

The Ohio State Board of Pharmacy
approved these Minutes September 9, 2008