

**Minutes of the May 7-9, 2012**  
**Meeting of the Ohio State Board of Pharmacy**

**Monday, May 7, 2012**

**10:00 a.m.** The Ohio State Board of Pharmacy convened in Room East B, 31<sup>st</sup> Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

Donald M. Casar, R.Ph., *President*; Brian M. Joyce, R.Ph., *Vice-President*; Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph. and Kevin J. Mitchell, R.Ph.

Also present were Kyle Parker, *Executive Director*; Tracy Nave, *Director of Legal Affairs*; Mark Keeley, *Legislative Affairs Administrator*; Nancy Little, *Licensing Administrator*; Eric Griffin, *Compliance Supervisor*; Danna Droz, *Prescription Drug Monitoring Program Director*; and Sean Culley, *Assistant Attorney General*.

**10:02 a.m.** Mr. Joyce 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 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. Lange and a roll-call vote was conducted by President Casar as follows: Cain – *yes*; Gahm – *yes*; Joyce – *yes*; Kolezynski – *yes*; Lange – *yes*; Mitchell – *yes*.

**10:56 a.m.** The Executive Session ended and the meeting was opened to the public.

**R-2012-281** Mr. Gahm moved that the settlement offer in the matter of **Michelle Wilson**, R.Ph., (03-2-28124) Wintersville, Ohio, be accepted as amended by the Board. The Board's acceptance of a settlement would be contingent on the respondent agreeing to the changes made by the Board. The motion was seconded by Mr. Kolezynski and approved by the Board: *Aye* – 6.

**R-2012-282** Mr. Casar announced that the following Settlement Agreement has been signed by all parties making it effective.

**SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY**  
(Docket Number D-111219-233)

In The Matter Of:

**THOMAS M. CLANCY, R.Ph.**

83 Galloping Hill Road

P.O. Box 102

Basking Ridge, New Jersey 07920

This Settlement Agreement is entered into by and between Thomas M. Clancy 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.

Thomas M. Clancy 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. Thomas M. Clancy 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, limit, 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, on or about December 19, 2011, pursuant to Chapter 119. of the Ohio Revised Code, Thomas M. Clancy 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. Thomas M. Clancy requested a hearing; it was scheduled and continued. The December 19, 2011 Proposal to Deny/Notice of Opportunity for Hearing contains the following allegations or charges:

- (1) Thomas M. Clancy, is a registered pharmacist in the state of New Jersey, and on or about August 1, 2011 applied for reciprocal registration into the State of Ohio.
- (2) Thomas M. Clancy was disciplined twice by the New Jersey Board of Pharmacy for stealing drugs for personal consumption, and Thomas M. Clancy was arrested and placed into a pre-trial diversion program for stealing drugs, to wit: Thomas M. Clancy was admittedly disciplined in 1995 and again in 2004 by the New Jersey Board of Pharmacy, and Thomas M. Clancy was arrested on a criminal complaint on July 1, 2004, which was subsequently dismissed for completion of a pre-trial diversion program. Such conduct, board action, and criminal action, constitutes not being of good moral character and habits, being addicted to or abusing drugs; and/or having been disciplined by a professional licensing board within the meaning of Rule 4729-5-04 of the Ohio Administrative Code; as well, such constitutes being guilty of gross immorality and/or guilty of dishonesty or unprofessional conduct in the practice of pharmacy, and/or being impaired physically or mentally or abusing drugs to such a degree as to render Thomas M. Clancy unfit to practice pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

Thomas M. Clancy neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated December 19, 2011; 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, Thomas M. Clancy knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

On the basis of the Findings of Fact set forth above, the documentation Mr. Clancy submitted to the Board, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the application for reciprocity, and directs Thomas M. Clancy to attend the Reciprocity Review session. Information regarding attendance is enclosed herewith.

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

Thomas M. Clancy 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.

Thomas M. Clancy 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. Thomas M. Clancy 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/ Thomas M. Clancy</u> Thomas M. Clancy, R.Ph., Respondent	<u>04/07/2012</u> Date of Signature
<u>/s/ Robert J. Garrity</u> Robert J. Garrity, Attorney for Respondent	<u>04/02/2012</u> Date of Signature
<u>/s/ Donald M. Casar</u> Donald M. Casar, R.Ph., President Ohio State Board of Pharmacy	<u>05/07/2012</u> Date of Signature
<u>/s/ Sean M. Culley</u> <del>Tracy M. Nave, Ohio Assistant Attorney General</del> Sean M. Culley, Ohio Assistant Attorney General	<u>05/07/2012</u> Date of Signature

12:10 p.m. The Board recessed briefly.

12:15 p.m. Mr. Keeley presented the Legislative Report.

Mr. Gahm stated the Nursing Board Committee on Prescription Governance would meet on May 14, 2012.

Ms. Lange stated the Physician Assistant Formulary Committee did not meet.

Ms. Droz presented the Ohio Automated Prescription Reporting System update.

Ms. Little presented the Licensing Report update.

Mr. Garner presented the Information Technology Report update.

Ms. Lange presented the Pharmacy Technician Exam Report update.

There was no report from the Medical Board Prescribing Committee.

12:41 p.m. The Board recessed for lunch.

1:38 p.m. The meeting reconvened in Room East B.

The Board was joined by Assistant Attorney General Sean Culley to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **M. Susan McDaniel**, R.Ph. (03-3-14278) Circleville, Ohio.

2:32 p.m. The hearing ended and the record was closed.

Mr. Gahm moved that the Board recess in order to consider this quasi-judicial matter in accordance with Chapter 119. of the Revised Code and the case precedent of *Angerman v. State Medical Bd.* (1990) 70 Ohio App.3d 346 and *TBC Westlake Inc. v. Hamilton Cty Bd of Revision, et al.* (1998) 81 Ohio St.3d 58. The motion was seconded by Ms. Lange and a roll-call vote was conducted by President Casar as follows: Cain – *yes*; Gahm – *yes*; Joyce – *yes*; Kolezynski– *yes*; Lange – *yes*; Mitchell – *yes*.

2:44 p.m. The recess ended and the meeting was open to the public.

R-2012-283 After votes were taken in public session, the Board adopted the following order in the matter of **M. Susan McDaniel**, R.Ph. (03-3-14278) Circleville, Ohio.

**ORDER OF THE STATE BOARD OF PHARMACY**

(Docket Number D-111121-225)

In The Matter Of:

**M. SUSAN McDANIEL, R.Ph.**

1615 Crossing Boulevard  
Circleville, Ohio 43113  
(R.Ph. Number 03-3-14278)

**INTRODUCTION**

The Matter of M. Susan McDaniel came for hearing on May 7, 2012, before the following members of the Board: Donald M. Casar, R.Ph. (presiding); Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph. and Kevin J. Mitchell, R.Ph.

Michael A. Moné, R.Ph., absent.

M. Susan McDaniel was represented by Daniel D. Connor. The State of Ohio was represented by Sean M. Culley, Assistant Attorney General.

**SUMMARY OF EVIDENCE**

**State's Witnesses:**

None

**Respondent's Witnesses:**

1. M. Susan McDaniel, R.Ph., Respondent
2. Gregory McDaniel

**State's Exhibits:**

1. Reinstatement hearing request letter [11-14-11]  
1A-1D. Procedurals
2. State Board of Pharmacy Order in re M. Susan McDaniel, R.Ph. [02-11-11]

**Respondent's Exhibits:**

- A. PRO Pharmacist Recovery Contract for Susan McDaniel [02-15-11]
- B. Talbot Hall Aftercare Discharge Report [02-03-12]
- C. FirstLab Test History Report [07-23-10 to 04-27-12]
- D. Support group meeting attendance records [01-02-11 to 04-26-12]
- E. Support group meeting calendars [January 2011 to April 2012]
- F. Continuing education credits and certificates [04-25-10 to 04-25-12]

- G. Judgment Entry, State of Ohio -vs- Mary S. McDaniel, Case No. 10 CR 500, Ross County, Ohio Common Pleas Court [03-02-12]; Entry, State of Ohio VS Mary S. McDaniel, Case No. 10 CR 500, Ross County, Ohio Common Pleas Court [01-03-11]
- H. Ohio Chemical Dependency Professional Board certificate [02-24-12]; Columbus State transcript [03-31-12]
- I. Copy of restitution [02-09-12]
- J. Letter of support from Megan Rees, RPh, PharmD, PRO advocate
- K. Letter of support from Dr. Nancy Alkire, MD [04-17-12]
- L. Letter of support from Scott R. Mote, Executive Director, Ohio Lawyers Assistance Program, Inc. [04-23-12]
- M. Five letters of advocacy [04-26-12 to 04-27-12]

#### FINDING 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 M. Susan McDaniel has substantially complied with the terms set forth in the Order of the State Board of Pharmacy, Docket Number D-100614-122, effective February 11, 2011.

#### 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, number 03-3-14278, held by M. Susan McDaniel to practice pharmacy in Ohio subject to a period of probation for five years beginning on the effective date of this Order, with the following conditions:

(A) M. Susan McDaniel 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 her 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 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.

(3) Attendance is required a minimum of three times per calendar week (Sunday through Saturday), 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) M. Susan McDaniel 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 M. Susan McDaniel's progress towards recovery and what M. Susan McDaniel has been doing during the previous three months.

(C) Other terms of probation are as follows:

(1) The State Board of Pharmacy hereby declares that M. Susan McDaniel'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) M. Susan McDaniel may not serve as a responsible pharmacist.

(3) M. Susan McDaniel may not destroy, assist in, or witness the destruction of controlled substances.

(4) M. Susan McDaniel must abide by the contract with her treatment provider and must immediately report any violation of the contract to the Board.

(5) M. Susan McDaniel must not violate the drug laws of Ohio, any other state, or the federal government.

(6) M. Susan McDaniel must abide by the rules of the State Board of Pharmacy.

(7) M. Susan McDaniel must comply with the terms of this Order.

(8) M. Susan McDaniel'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.

M. Susan McDaniel 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.

Deborah Lange moved for Findings of Fact; Brian Joyce seconded the motion. Motion passed (Aye-6/Nay-0).

Troy Gahm moved for Action of the Board; Kevin Mitchell seconded the motion. Motion passed (Aye-6/Nay-0).

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**2:46 p.m.**

**R-2012-284**

Mr. Parker presented a request from pharmacy intern **Mohamad Hani Farhat** (06-0-07551) Dearborn, Michigan, for permission to extend his pharmacist examination application due to extraordinary circumstances. After discussion, Mr. Cain moved that **Mr. Farhat's** request be denied. The motion was seconded by Mr. Gahm and approved by the Board: *Aye – 6*.

**R-2012-285**

Mr. Joyce moved that a request from **Buderer Pharmacies**, (02-1106900) Sandusky, Ohio, (02-1198400) Perrysburg, Ohio and (02-2133300) Avon, Ohio for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites: **St. Vincent Charity Medical Center**, (02-2007150) Cleveland, Ohio be approved. The motion was seconded by Mr. Kolezynski and approved by the Board: *Aye – 6*.

**R-2012-286**

Mr. Joyce moved that a request from **Humana Right Source**, (02-1826600) West Chester, Ohio for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites: Specialty drugs to multiple prescriber locations (on file) be approved. The motion was seconded by Ms. Lange and approved by the Board. *Aye – 6*.

**2:59 p.m.**

Mr. Kolezynski moved that the Board recess to 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. Joyce and a roll-call vote was conducted by President Casar as follows: Cain – *yes*; Gahm – *yes*; Joyce – *yes*; Kolezynski – *yes*; Lange – *yes*; Mitchell – *yes*.

**3:40 p.m.**

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

**3:41 p.m.**

The Board recessed for the day.

**TUESDAY, MAY 8, 2012**

**8:39 a.m.** The Ohio State Board of Pharmacy convened in Room East B, 31<sup>st</sup> Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

Donald M. Casar, R.Ph., *President*; Brian M. Joyce, R.Ph., *Vice-President*; Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph. and Kevin J. Mitchell, R.Ph.

**R-2012-287** Ms. Lange moved that the Board minutes of April 2-3, 2012, be approved as amended. Mr. Joyce seconded the motion and it was approved by the Board: *Aye* – 6.

**8:45 a.m.** The Board recessed briefly.

**9:07 a.m.** The Board was joined by Assistant Attorney General Sean Culley to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Anthony David Figliola**, R.Ph. (03-1-24426) Sugar Grove, Ohio.

**11:48 a.m.** The hearing ended and the record was closed.

Ms. Lange moved that the Board recess in order to consider this quasi-judicial matter in accordance with Chapter 119. of the Revised Code and the case precedent of *Angerman v. State Medical Bd.* (1990) 70 Ohio App.3d 346 and *TBC Westlake Inc. v. Hamilton Cty Bd of Revision, et al.* (1998) 81 Ohio St.3d 58. The motion was seconded by Mr. Gahm and a roll-call vote was conducted by President Casar as follows: Cain – *yes*; Gahm – *yes*; Joyce – *yes*; Kolezynski – *yes*; Lange – *yes*; Mitchell – *yes*.

**12:03 p.m.** The recess ended and the meeting was open to the public.

**R-2012-288** After votes were taken in public session, the Board adopted the following order in the matter of **Anthony David Figliola**, R.Ph. (03-1-24426) Sugar Grove, Ohio.

**ORDER OF THE STATE BOARD OF PHARMACY**

(Docket Number D-120131-239)

In The Matter Of:

**ANTHONY DAVID FIGLIOLA, R.Ph.**

7955 Buckeye Road

Sugar Grove, Ohio 43155

(R.Ph. Number 03-1-24426)

**INTRODUCTION**

The Matter of Anthony David Figliola came for hearing on May 8, 2012, before the following members of the Board: Donald M. Casar, R.Ph. (presiding); Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph. and Kevin J. Mitchell, R.Ph.

Michael A. Moné, R.Ph., absent.

Anthony David Figliola was represented by Richard A. Cline. The State of Ohio was represented by Sean M. Culley, Assistant Attorney General.

### SUMMARY OF EVIDENCE

#### State's Witness:

1. William Padgett, Ohio State Board of Pharmacy

#### Respondent's Witness:

1. Anthony David Figliola, R.Ph., Respondent

#### State's Exhibits:

1. Copy of Notice of Opportunity for Hearing letter [01-31-12]  
1A-1C. Procedurals
2. Terminal Distributor Change of Responsible Person Notice [07-29-11]
3. Criminal court records provided by Anthony David Figliola [various dates]
4. OHLEG criminal record of Anthony D. Figliola [09-13-11]
5. Pharmacist Renewal Application [07-15-03]
6. Notarized written statement of Anthony D. Figliola, R.Ph. [11-29-11]
7. OHLEG criminal record of Anthony D. Figliola [11-29-11]
8. Fairfield County Municipal Court Docket entry for case number TRC 0208870A [11-29-11]; Fairfield County Municipal Court Information on criminal case number CRB 0601578 [11-30-11]; Fairfield County Municipal Court Information on traffic case number TRC 0208870A [11-30-11]
9. Court records regarding Disorderly Conduct by Intoxication [06-29-06]
10. Pharmacist Renewal Application [08-03-07]
11. Pharmacist Renewal Application [07-20-06]
12. Letter from Richard Cline to Bill Padgett [12-01-11]

#### Respondent's Exhibits:

- A. FY 2010 Performance evaluation [02-09-10]
- B. FY 2011 Performance evaluation [04-22-11]
- C. FY 2012 Performance evaluation [04-10-12]
- D. Letter of support from Stephen Figliola [04-30-12]
- E. Continuing education credits and certificates [11-17-10 to 04-28-12]
- F. Continuing education units scheduled [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 State Board of Pharmacy indicate that Anthony David Figliola was originally licensed in the State of Ohio on December 19, 2000, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio.
- (2) Anthony David Figliola did, on or about July 15, 2003, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Anthony David Figliola indicated on his pharmacist license renewal application that he had not been charged with a crime when in fact he had been charged on July 3, 2002, with OVI, and convicted on October 21, 2002. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.
- (3) Anthony David Figliola did, on or about July 20, 2006, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Anthony David Figliola indicated on his pharmacist license renewal application that he had not been charged with a crime when in fact he had been charged on June 29, 2006, of Disorderly Conduct by Intoxication and subsequently convicted. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.
- (4) Anthony David Figliola did, on or about August 3, 2007, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Anthony David Figliola indicated on his pharmacist license renewal application that he had not been charged with a crime when in fact he had been charged on June 29, 2006, of Disorderly Conduct by Intoxication and subsequently convicted. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

### CONCLUSION OF LAW

The State Board of Pharmacy concludes that paragraphs (2) through (4) of the Findings of Fact constitute being guilty of dishonesty in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

### DECISION OF THE BOARD

After consideration of the record as a whole, the State Board of Pharmacy hereby reprimands Anthony David Figliola for his actions in this matter. Specifically, the Board notes multiple instances of dishonesty in Anthony David Figliola's renewal applications and what appears to be an evolving pattern. Anthony David Figliola is hereby publicly reprimanded for this behavior and reminded of his duty to

cooperate with the Board in all regulatory matters and answer all questions honestly.

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 seven hundred fifty dollars (\$750.00) on Anthony David Figliola 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.

In addition, Anthony David Figliola must submit to the Board, within sixty days from the effective date of this Board Order, the certificate of completion for his scheduled May 22, 2012 continuing education courses in Pharmacy Law and Ethics.

Deborah Lange moved for Findings of Fact; Troy Gahm seconded the motion. Motion passed (Aye-6/Nay-0).

Kevin Mitchell moved for Conclusions of Law; Brian Joyce seconded the motion. Motion passed (Aye-6/Nay-0).

Kevin Mitchell moved for Action of the Board; Richard Kolezynski seconded the motion. Motion passed (Aye-6/Nay-0).

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**12:05 p.m.** The Board recessed for lunch.

**1:30 p.m.** The Board reconvened in Room South A, 31<sup>st</sup> Floor of the Vern Riffe Center for Government and the Arts. The following candidates for licensure by reciprocity introduced themselves to the Board, and then participated in a discussion of pharmacy laws and rules with Ms. Little, Licensing Administrator and the Board.

Pratap Krishna Anne	California
Amber Bilal Baig	Indiana
Christopher Eugene Bailes	West Virginia
Patricia Kathleen Bardis	Florida
Thomas Clancy	New Jersey
Mona Mohammad Deib	Michigan
Angela M. Difasi	Kentucky
Beth Anne Duplaga	Michigan
Michelle Rene Ferrera	West Virginia
Kidanewold T. Geda	Maryland
John Joseph Gruber	Illinois
Mandy Lea Hamon	West Virginia
Johnna Efaw Harter	West Virginia
Sharareh Khorashadi	Massachusetts
Jill Krisl	Colorado
Joyce Ann Napierkowski	Washington
Lan T. Nguyen	New York

Jalpa S. Patel	New Jersey
Bruce Raymond Predebon	Pennsylvania
Laura Anne Schalliol	Michigan
Lee Anne Tadlock	North Carolina
Brittany Elise Tate	Pennsylvania
Okechukwu Cajetan Unogu	Michigan
Ryan James Wagner	Texas
Kanyetta Wilson Wansley	Mississippi
Melanie Lynn Vonushonis	Pennsylvania

1:50 p.m. The Board recessed for the day.

**WEDNESDAY, MAY 9, 2012**

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

9:05 a.m. The Board was joined by Assistant Attorney General Sean Culley to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Ann Elizabeth Nichols**, R.Ph. (03-3-29130) Pickerington, Ohio.

12:07 p.m. The hearing ended and the record was closed.

Mr. Joyce moved that the Board recess in order to consider this quasi-judicial matter in accordance with Chapter 119. of the Revised Code and the case precedent of *Angerman v. State Medical Bd.* (1990) 70 Ohio App.3d 346 and *TBC Westlake Inc. v. Hamilton Cty Bd of Revision, et al.* (1998) 81 Ohio St.3d 58. The motion was seconded by Mr. Mitchell and a roll-call vote was conducted by President Casar as follows: Cain – *yes*; Gahm – *yes*; Joyce – *yes*; Kolezynski– *yes*; Lange – *yes*; Mitchell – *yes*; Moné – *yes*.

12:39 p.m. The recess ended and the meeting was open to the public.

R-2012-289 After votes were taken in public session, the Board adopted the following order in the matter of **Ann Elizabeth Nichols**, R.Ph. (03-3-29130) Pickerington, Ohio.

**ORDER OF THE STATE BOARD OF PHARMACY**

(Docket Number D-110113-159)

In The Matter Of:

**ANN ELIZABETH NICHOLS, R.Ph.**

132 Great Trail Street  
Pickerington, Ohio 43147  
(R.Ph. Number 03-3-29130)

## INTRODUCTION

The Matter of Ann Elizabeth Nichols came for hearing on May 9, 2012, before the following members of the Board: Donald M. Casar, R.Ph. (presiding); Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph.; Kevin J. Mitchell, R.Ph. and Michael A. Moné, R.Ph.

Ann Elizabeth Nichols was represented by Daniel D. Connor. The State of Ohio was represented by Sean M. Culley, Assistant Attorney General.

## SUMMARY OF EVIDENCE

### State's Witnesses:

1. Ann Elizabeth Nichols, R.Ph., Respondent
2. Eric Griffin, Ohio State Board of Pharmacy
3. Rob Amiet, Jr., R.Ph., Ohio State Board of Pharmacy

### Respondent's Witnesses:

1. Ann Elizabeth Nichols, R.Ph., Respondent
2. Jonathan Hinty
3. Stephen Nichols

### State's Exhibits:

1. Copy of Summary Suspension Order/Notice of Opportunity for Hearing letter [01-13-11]  
1A-1G. Procedurals
2. Copy of Addendum Notice/Summary Suspension [10-19-11]  
2A-2E. Procedurals
3. Notarized written statement of Ann Nichols [01-05-11]
4. CVS/Pharmacy Schedule II Inventory Log [various dates]
5. Materials regarding RX #0674956 [various dates]

### Respondent's Exhibits:

- A. PRO Pharmacist's Recovery Contract for Ann Nichols [09-20-11]
- B. Shepherd Hill chart and lab slips [various dates]
- C. Cornerstone of Recovery chart [various dates]
- D. Letters from Todd Feasel, PCC-S, Program Director, Cornerstone of Recovery, Inc. [01-12-12 and 03-26-12]
- E. FirstLab Test History Report [10-10-11 to 04-10-12]
- F. Support group meeting attendance records [09-24-11 to 05-05-12]
- G. Support group meeting attendance calendars [September 2011 to March 2012]
- H. Prescriptions for Ann Nichols [various dates]

- I. Letter from Jarrod Grossman, PharmD, RPh, Executive Director, Pharmacists Rehabilitation Organizations, Inc. [03-17-12]
- J. Continuing education credits and certificates [03-24-12 to 03-26-12]
- K. Indictment, State of Ohio, Franklin County, Case No. 12CR01217, Franklin County, Ohio Common Pleas Court [01-13-12]
- L. Five letters of advocacy [03-07-12 to 03-21-12]

### 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 Ann Elizabeth Nichols was originally licensed in the State of Ohio on January 2, 2009, pursuant to examination, and her license to practice pharmacy in the State of Ohio was Summarily Suspended effective January 13, 2011. Records further reflect during the relevant time periods stated herein, Ann Elizabeth Nichols was the Responsible Pharmacist at CVS/Pharmacy #3193, 1400 Parsons Avenue, Columbus, Ohio 43206 pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) Ann Elizabeth Nichols is addicted to or abusing drugs or alcohol and/or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy, to wit: Ann Elizabeth Nichols has admitted that she is addicted to the use of Lyrica, a Schedule V Controlled Substance, and tramadol, a dangerous drug. Pharmacy personnel noticed that Ann Elizabeth Nichols' work performance has declined and Ann Elizabeth Nichols appeared impaired and/or sleeping while working. Ann Elizabeth Nichols has also admitted to having addiction issues with alcohol. Such conduct indicates that Ann Elizabeth Nichols is within the ambit of Sections 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.
- (3) Ann Elizabeth Nichols did, from January 24, 2010 through January 5, 2011, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of CVS/Pharmacy #3139, beyond the express or implied consent of the owner, to wit: Ann Elizabeth Nichols has admitted to stealing tramadol 50 mg, a dangerous drug. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Ann Elizabeth Nichols did, from January 24, 2010 through January 5, 2011, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of CVS/Pharmacy #3139, beyond the express or implied consent of the owner, to wit: Ann Elizabeth Nichols has admitted to stealing hydrocodone/APAP 5/500 mg, a Scheduled III Controlled Substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(5) Ann Elizabeth Nichols did, from January 24, 2010 through January 5, 2011, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of CVS/Pharmacy #3139, beyond the express or implied consent of the owner, to wit: Ann Elizabeth Nichols has admitted to stealing Lyrica 150 mg, a Scheduled V Controlled Substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(6) Ann Elizabeth Nichols did, from August, 2010 through January 5, 2011, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: without a prescription and without a legitimate medical purpose, Ann Elizabeth Nichols sold OxyContin 80 mg, a Scheduled II Controlled Substance. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

(7) Ann Elizabeth Nichols did, from January 24, 2010 through January 5, 2011, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: without a prescription and without a legitimate medical purpose, Ann Elizabeth Nichols sold oxycodone/APAP 5/325 mg, a Scheduled II Controlled Substance. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

(8) Ann Elizabeth Nichols did, on or about November 24, 2010, misbrand a drug, to wit: when Ann Elizabeth Nichols received a prescription for omeprazole 2 mg/ml oral suspension for a two-month old child, RX #0674956, Ann Elizabeth Nichols dispensed omeprazole 20 mg capsules, which had not been specifically prescribed by the physician. The patient's family noticed the wrong drug and brought it back; when Ann Elizabeth Nichols compounded it and re-dispensed the medication, the bottle contained a cloudy solution with broken tablets in the bottom of the bottle and when opened the liquid "exploded out of the bottle." Inasmuch as Ann Elizabeth Nichols incorrectly compounded the medication, the patient's family had to take the prescription elsewhere for proper dispensing. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

#### CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (3) through (8) 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.

(2) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

(3) The State Board of Pharmacy concludes that paragraph (7) 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 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Ann Elizabeth Nichols on January 13, 2011.

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, Number 03-3-29130, held by Ann Elizabeth Nichols and such suspension is effective as of the date of the mailing of this Order.

(A) Ann Elizabeth Nichols, 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) Ann Elizabeth Nichols, 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.

Further, after two years from the effective date of this Order, the Board will consider any petition filed by Ann Elizabeth Nichols 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) Ann Elizabeth Nichols 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, submit 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) Alcohol must be added to the standard urine drug screen. A Breathalyzer may be used to test for alcohol, but the test must be conducted by an appropriately certified individual within twelve hours of notification.
- (c) Results of all drug and alcohol screens must be negative. Refusal of a drug and alcohol screen or a diluted drug and alcohol 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) Attendance is required a minimum of three times per calendar week (Sunday through Saturday), at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
- (3) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (B) Ann Elizabeth Nichols must take and pass the MPJE (Multistate Pharmacy Jurisprudence Examination) or an equivalent examination acceptable to the Board before petitioning for reinstatement.
- (C) Ann Elizabeth Nichols must demonstrate satisfactory proof to the Board that she is no longer addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy.
- (D) Ann Elizabeth Nichols 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 and alcohol 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 terms of this Order.
- (E) If reinstatement is not accomplished within three years of the effective date of this Order, Ann Elizabeth Nichols must also show successful completion of the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination approved by the Board.

(F) Upon such time as the Board may consider reinstatement, Ann Elizabeth Nichols 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.

Michael Moné moved for Findings of Fact; Edward Cain seconded the motion. Motion passed (Aye-7/Nay-0).

Troy Gahm moved for Conclusions of Law; Michael Moné seconded the motion. Motion passed (Aye-7/Nay-0).

Troy Gahm moved for Action of the Board; Michael Moné seconded the motion. Motion passed (Aye-5/Nay-2).

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**12:40 p.m.** The Board recessed for lunch.

**1:41 p.m.** The meeting reconvened in room East B. Mr. Moné left in anticipation of recusing himself from the afternoon's scheduled hearing.

**1:42 p.m.**

**R-2012-290** The Board revisited the request for a ScriptCenter® Automated Prescription Pick Up machine to be placed in Promedica Toledo Hospital. After further discussion, Mr. Joyce made a motion to approve the request, as presented, Mr. Mitchell seconded. The motion failed by a vote (Nay-4/Aye-2). A request was made for a more specific proposal to be submitted for consideration at the next meeting of the Board.

**2:07 p.m.** The Board recessed briefly.

**2:12 p.m.** The Board was joined by Assistant Attorney General Sean Culley to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Call, Inc. dba Rochester Pharmaceuticals**, Rochester, New York.

**3:08 p.m.** The hearing ended and the record was closed.

Mr. Joyce moved that the Board recess in order to consider this quasi-judicial matter in accordance with Chapter 119. of the Revised Code and the case precedent of *Angerman v. State Medical Bd.* (1990) 70 Ohio App.3d 346 and *TBC Westlake Inc. v. Hamilton Cty Bd of Revision, et al.* (1998) 81 Ohio St.3d 58. The motion was seconded by Ms. Lange and a roll-call vote was conducted by President Casar as follows: Cain – yes; Gahm – yes; Joyce – yes; Kolezynski – yes; Lange – yes; Mitchell – yes.

**3:19 p.m.**

**R-2012-291** The recess ended and the meeting was opened to the public. After votes were taken in public session, the Board adopted the following order in the matter of **Call, Inc. dba Rochester Pharmaceuticals**, Rochester, New York.

**ORDER OF THE STATE BOARD OF PHARMACY**

(Docket Number D-120103-236)

In The Matter Of:

**CALL, INC., DBA ROCHESTER PHARMACEUTICALS**

c/o Joseph Pecora, President  
3173 Chili Avenue, Suite 100  
Rochester, New York 14624

**INTRODUCTION**

The Matter of Call, Inc., dba Rochester Pharmaceuticals came for hearing on May 9, 2012, before the following members of the Board: Donald M. Casar, R.Ph. (presiding); Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph. and Kevin J. Mitchell, R.Ph.

Michael A. Moné, R.Ph., recused.

Call, Inc., dba Rochester Pharmaceuticals was represented by Lisa M. Allen and Christina N. Gifford, appearing pursuant to a motion to appear *pro hac vice*, which was granted by the Board. The State of Ohio was represented by Sean M. Culley, Assistant Attorney General.

**SUMMARY OF EVIDENCE**

**State's Witnesses:**

1. Paul Kover, R.Ph., Ohio State Board of Pharmacy
2. Joseph Pecora, Respondent
3. Scott Navitsky, Respondent

**Respondent's Witnesses:**

None

**State's Exhibits:**

1. Copy of Proposal to Deny/Notice of Opportunity for Hearing letter [01-03-12]  
1A-1C. Procedurals  
1D. Motion for Permission to Appear Pro Hac Vice [05-08-12]
2. Application for Registration as a Wholesale Distributor of Dangerous Drugs [02-01-11]
- 3A. Criminal History Records for Scott Navitskor (*sic*) [02-18-11]
- 3B. Criminal History Report for Scott Navitskor (*sic*) [05-06-11]
- 4A. Criminal History Report for Joseph James Pecora [02-18-11]

- 4B. Local Court Criminal Disposition Report [06-23-86]
- 5. Materials submitted by counsel for Call, Inc., dba Rochester Pharmaceuticals [03-23-12]

Respondent's Exhibits:

- A. Declaration of Joseph J. Pecora [03-23-12]
- AA. Curriculum Vitae of Joseph J. Pecora [not dated]
- AB. Application for Registration as a Wholesale Distributor of Dangerous Drugs [01-26-11]
- AC. Proposal to Deny/Notice of Opportunity for Hearing [01-03-12]
- AD. Criminal Disposition Report from Town of Gates [06-23-86]
- AE. Examples of current licenses/registrations from other states [various dates]
- B. Declaration of Scott J. Navitsky [05-01-12]
- BA. Curriculum Vitae of Scott Navitsky [not dated]
- BB. Application for Registration as a Wholesale Distributor of Dangerous Drugs [01-26-11]
- BC. Proposal to Deny/Notice of Opportunity for Hearing [01-03-12]
- C. New York Criminal Code § 170.55 Adjournment in Contemplation of Dismissal [05-01-12]

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 on or about February 1, 2011, Joseph Pecora was the President, Secretary and Treasurer, for Call, Inc., d.b.a. Rochester Pharmaceuticals, and that on January 26, 2011, Call, Inc. d.b.a. Rochester Pharmaceuticals, located at 3173 Chili Avenue, Suite 100; Rochester, New York 14624, applied for registration as a Wholesale Distributor of Dangerous Drugs.
- (2) Joseph Pecora did, on or about January 26, 2011, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: the application indicated that the owners had not been charged or convicted of crimes when in fact both the company's President and Vice President had been either charged with or convicted of criminal offenses. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Sections 3719.03 and 4729.53 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby agrees to license or register Call, Inc., dba Rochester Pharmaceuticals. and, therefore, approves the Application for a Wholesale Distributor of Dangerous Drugs license submitted by Call, Inc., dba Rochester Pharmaceuticals on or about February 1, 2011.

Troy Gahm moved for Findings of Fact; Deborah Lange seconded the motion. Motion passed (Aye-6/Nay-0).

Richard Kolezynski moved for Action of the Board; Edward Cain seconded the motion. Motion passed (Aye-6/Nay-0).

**3:20 p.m.**

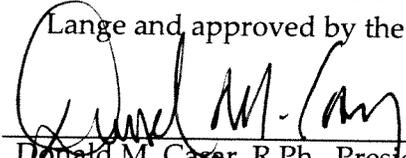
Mr. Cain moved that the Board receive Per Diem as follows:

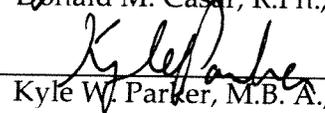
PER DIEM	4/23	5/7	5/8	5/9	Total
Cain		1	1	1	3
Casar		1	1	1	3
Gahm	1	1	1	1	4
Joyce	1	1	1	1	4
Kolezynski		1	1	1	3
Lange		1	1	1	3
Mitchell		1	1	1	3
Moné				1	1

Ms. Lange seconded the motion and it was approved by the Board: *Aye* – 6.

**3:22 p.m.**

Mr. Gahm moved that the meeting be adjourned. The motion was seconded by Ms. Lange and approved by the Board: *Aye* – 6.

  
 \_\_\_\_\_ Date: 7/9/12  
 Donald M. Casar, R.Ph., President

  
 \_\_\_\_\_ Date: 7-9-12  
 Kyle W. Parker, M.B. A., R.Ph., Executive Director