

Minutes of the December 3-4, 2012
Meeting of the Ohio State Board of Pharmacy

Monday, December 3, 2012

10:00 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:

Kevin J. Mitchell, R.Ph., *Vice-President*; Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Michael A. Moné, R.Ph. and Kilee S. Yarosh, R.Ph.

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

10:01 a.m. Mr. Gahm 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 Mr. Kolezynski and a roll-call vote was conducted by presiding Vice-President Mitchell as follows: Cain – yes; Huwer – yes; Gahm – yes; Kolezynski – yes; Moné – yes; Yarosh – yes.

10:52 a.m. The Executive Session ended and the meeting was opened to the public.

The Board recessed briefly.

11:04 a.m. The meeting reconvened in Room East B.

Mr. Gahm gave update on the Nursing Board CPG Committee meeting that was held on October 22, 2012.

Mr. Mitchell and Mr. Moné presented the Medical Board PAPC Report.

Mr. Keeley presented the Legislative Report.

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

Ms. Little provided the Licensing Report.

Mr. Garner provided the IT Report.

R-2013-085 Mr. Gahm moved that the Board adopt the following recognition for Laurie Sturtz, recognizing her outstanding service to the Board of Pharmacy. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 6.

RESOLUTION of the BOARD

WHEREAS, the Board's Compliance Secretary Supervisor Laurie J. Sturtz has been with the Board since October of 1986, giving of herself great dedication and personal sacrifice to the benefit of the Board and the citizens of the State of Ohio for over 26 years;

WHEREAS, her efforts have significantly contributed to the ongoing operation of this Board, enabling this Board to serve its constituents effectively and efficiently;

WHEREAS, the Board recognizes that, upon her retirement this December 31, 2012, her daily presence in the Board office will be greatly missed;

BE IT RESOLVED, that we, the undersigned Members of the Ohio State Board of Pharmacy, in the Board's one hundred twenty-eighth year, do hereby express our profound appreciation to Laurie J. Sturtz for her dedication and service to the Board and to the citizens of Ohio; and

BE IT FURTHER RESOLVED, that this resolution be spread upon the permanent minutes of the Ohio State Board of Pharmacy and a copy presented to:
LAURIE J. STURTZ

R-2013-086 Mr. Gahm moved that the settlement offer in the matter of **New England Compounding Center** (02-1355650) Framingham, MA, be denied. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 5/Nay – 1.

R-2013-087 Mr. Kolezynski moved that the settlement offer in the matter of **Brenda Corbett, R.Ph.**, (03-3-14233) Liberty Township, 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. Moné and approved by the Board: Aye – 4/Nay – 3.

11:04 a.m. The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **Jennifer Gabriel, R.Ph.** (03-1-27450) Powell, Ohio, the current responsible person for Omnicare of Central Ohio (02-0564600), also be the responsible person for the following pharmacy:

Vineyard Free Medical Clinic, Columbus, Ohio (02-1744950)

After discussion, it was determined that the request was valid but may not need board approval. The request was deferred to Mr. Parker for research.

R-2013-088 The Board received a request for permission to withdraw an application for certification as a pain-management clinic for the following site:

Center for Pain Relief Tri-State, PLLC, Proctorville, Ohio (02-2139000)

After discussion, Mr. Moné moved the Board approve the request. The motion was seconded by Ms. Huwer and approved by the Board: Aye – 6.

R-2013-089 Ms. Little presented a request from pharmacy intern **John Bickel**, (06-0-09046) Columbus, Ohio, for permission to approve his internship hours due to extraordinary circumstances pursuant to Rule 4729-3-04 (Pharmacy Intern Identification Card Renewal). After discussion, Mr. Moné moved that the Board approve Mr. Bickel's request. The motion was seconded by Mr. Gahm and approved by the Board: Aye – 6.

R-2013-090 Ms. Little presented a request from **Alan Pendergrass**, R.Ph., (03-1-27675) Hudson, Ohio, for permission to precept **Kevin Lanning**, pharmacist intern (06-0-11499) Orient, Ohio, for a period of one year. After discussion, Mr. Gahm moved that Mr. Pendergrass' request be approved. The motion was seconded by Mr. Moné and approved by the Board: Aye – 6.

11:40 a.m. The Board met with Bill Cover, Walgreen Company, for a discussion regarding sterile compounding.

11:55 a.m. Mr. Keeley offered statistics related to pharmacist licensing examinations.
Mr. Parker presented a discussion about the Ohio Licensing Ceremony.

11:59 a.m. The Board recessed for lunch.

1:30 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 **David L. Persinger**, Washington Court House, Ohio.

3:39 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 Mr. Kolezynski and a roll-call vote was conducted by Vice-President Mitchell as follows: Cain – *yes*; Huwer – *yes*; Gahm – *yes*; Kolezynski – *yes*; Moné – *yes*; Yarosh – *yes*.

4:18 p.m. The recess ended and the meeting was opened to the public.

R-2013-091 After votes were taken in public session, the Board adopted the following order in the matter of **David L. Persinger**, Washington Court House, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY
(Docket Number D-120817-258)

In The Matter Of:

DAVID LORING PERSINGER
7105 State Route 729 N.W.
Washington Court House, Ohio 43160

INTRODUCTION

The Matter of David Loring Persinger came for hearing on December 3, 2012, before the following members of the Board: Kevin J. Mitchell, R.Ph.; (presiding); Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Michael A. Moné, R.Ph. and Kilee S. Yarosh, R.Ph.

Brian M. Joyce, R.Ph., Absent.

David Loring Persinger 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. David Loring Persinger, Respondent
2. Raleigh Smith, R.Ph.

State's Exhibits:

1. Copy of Proposal to Deny/Notice of Opportunity for Hearing letter [08-16-12]
1A-1C. Procedurals
2. Order of the State Board of Pharmacy in re David Loring Persinger [03-18-11]

Respondent's Exhibits:

- A. PRO Pharmacist's Recovery Contract [01-19-10]
- B. Fayette Recovery Center Chart [2006]
- C. Fayette Recovery Center Chart [2008 to 2009]
- D. Fayette Recovery Center Reports [07-31-06 and 01-25-11]
- E. Cornerstone of Recovery Chart [2009 to 2010]
- F. Cornerstone of Recovery Reports [09-28-09 and 01-20-11]
- G. FirstLab Test History Report [02-25-10 to 01-27-11]; FirstLab Drug Testing Panels
- H. Wal-mart Urine Screens [various dates]

- I. PRO Meeting Attendance [07-15-08 to 11-17-09]
- J. Cornerstone IOP Meeting Attendance [11-19-09 to 01-14-10]
- K. PRO Meeting Attendance [01-17-10 to 11-16-11]
- L. Continuing Education Credits and Certificates [various dates]
- M. Report from Janet Clark, Ph.D. [01-25-11]
- N. Report from Raleigh Smith, R.Ph., PRO [01-24-11] and Report from Fonda Fichthorn [01-28-11]
- O. Four Letters of Advocacy [01-23-11 to 01-28-11]
- P. FirstLab Test History Report [02-25-10 to 11-24-12]
- Q. Meeting Attendance [01-02-11 to 12-02-12]
- R. Report from Janet Clark, Ph.D. [10-02-12]
- S. Fayette Recovery Center Report [11-19-12]
- T. Ohio Bureau of Criminal Identification Record Check No Record [11-06-12]
- U. Life Insurance Policy Schedule [04-07-12]
- V. Farmer's Market Publicity and Photographs [various dates]
- W. Letter from Dave Porter, State Parole Officer [not dated]
- X. Continuing Education Credits and Certificates [various dates]
- Y. Letter from Reverend Everett L. Miller [11-27-12]
- Z. Letter from Regina L. Blair, R.Ph. [11-25-12]

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 further indicate that David Loring Persinger was originally licensed to practice pharmacy in the State of Ohio on August 8, 1979, pursuant to examination, and on September 15, 1999 his license lapsed.
- (2) David Loring Persinger submitted an application for registration by examination on or about May 28, 2008. Such application was denied by the Board after the issuance of a Proposal to Deny/Notice of Opportunity for Hearing and a hearing. An Order was mailed and effective on March 18, 2011. Further, David Loring Persinger's pharmacist license in Kentucky was suspended in 1999.
- (3) David Loring Persinger is addicted to or abusing drugs and/or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: David Loring Persinger has admitted the following facts to a Board agent:
 - While working as a "floater" pharmacist, David Loring Persinger began abusing marijuana to deal with stress of the day;
 - David Loring Persinger began abusing cocaine in 1989;

- Due to cocaine abuse, David Loring Persinger was unable to make house payments because all of his money went to his cocaine addiction;
 - David Loring Persinger abused one to four grams of cocaine per day and practiced pharmacy while impaired;
 - David Loring Persinger has admitted that he is a "procrastinator" as his excuse for committing three infractions in the state of Kentucky by failing to report continuing education in a timely manner, such that David Loring Persinger was suspended by the Kentucky Board of Pharmacy.
- (4) David Loring Persinger was found guilty of a felony or gross immorality, to wit: David Loring Persinger was convicted in the state of Kentucky on August 22, 2007, of one count of Possession of a Controlled Substance, a class D felony; one count of Possession of a Controlled Substance, a class A misdemeanor; and one count of Possession of Drug Paraphernalia, a class A misdemeanor. Commonwealth of Kentucky vs. David Persinger, Case 05-CR-00200-002, Pike Circuit Court Division II.
- (5) David Loring Persinger was the subject of previous action by the Ohio State Board of Pharmacy wherein the Board concluded that David Loring Persinger violated a provision of Chapter 2925. of the Ohio Revised Code, to wit: David Loring Persinger was charged administratively, and subsequently convicted, by the Ohio State Board of Pharmacy alleging that between April of 2004 and May of 2005, David Loring Persinger knowingly aided and abetted in the sale of cocaine, a Schedule II controlled substance, when not for a legitimate medical purpose in the course of a series of "street sales."

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (3) through (5) of the Findings of Fact constitute having been found by the Board of Pharmacy not to be of good moral character and habits as provided in paragraph (C) of Rule 4729-5-04 of the Ohio Administrative Code.
- (2) The State Board of Pharmacy concludes that paragraphs (3) through (5) of the Findings of Fact constitute being addicted to or abusing liquor or drugs to such a degree as to render him unfit to practice pharmacy as provided in paragraph (D) of Rule 4729-5-04 of the Ohio Administrative Code and Division (A)(3) of Section 4729.16 of the Ohio Revised Code.
- (3) The State Board of Pharmacy concludes that paragraphs (2) and (5) of the Findings of Fact constitute having been disciplined by any professional licensing board as provided in paragraph (F) of Rule 4729-5-04 of the Ohio Administrative Code.

(4) The State Board of Pharmacy concludes that paragraphs (3) through (5) of the Findings of Fact constitute being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

(5) The State Board of Pharmacy concludes that paragraphs (3) through (5) 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.

(6) The State Board of Pharmacy concludes that paragraphs (4) and (5) 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.

(7) The State Board of Pharmacy concludes that paragraph (4) of the Findings of Fact constitutes having been convicted of a misdemeanor related to, or committed in, the practice of pharmacy as provided in Division (A)(4) of Section 4729.16 of the Ohio Revised Code and having been convicted of a felony and violating any state or federal pharmacy or drug law within paragraphs (A) and (B) of Rule 4729-5-04 of the Ohio Administrative Code.

DECISION OF THE BOARD

Pursuant to Section 4729.07 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the Application For Examination As A Pharmacist submitted by David Loring Persinger with the following conditions:

(A) David Loring Persinger must show successful completion of the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE) within 12 months from the effective date of this Board Order.

(B) David Loring Persinger 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 David Loring Persinger's 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.
- (C) David Loring Persinger 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 David Loring Persinger's progress towards recovery and what David Loring Persinger has been doing during the previous three months.
- (D) David Loring Persinger must work only under the direct physical supervision of a registered pharmacist for a period of six months following the date of employment.
- (E) Other terms of probation are as follows:
- (1) The State Board of Pharmacy hereby declares that David Loring Persinger'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) David Loring Persinger may not serve as a responsible pharmacist.

(3) David Loring Persinger may not destroy, assist in, or witness the destruction of controlled substances.

(4) David Loring Persinger must abide by the contract with his treatment provider and must immediately report any violation of the contract to the Board.

(5) David Loring Persinger must not violate the drug laws of Ohio, any other state, or the federal government.

(6) David Loring Persinger must abide by the rules of the State Board of Pharmacy.

(7) David Loring Persinger must comply with the terms of this Order.

(8) David Loring Persinger's license is deemed not in good standing until successful completion of the probationary period.

(F) 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.

David Loring Persinger 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.

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

Michael Moné moved for Conclusions of Law; Troy Gahm seconded the motion. Motion passed (Aye-6/Nay-0).

Richard Kolezynski moved for Action of the Board; Kilee Yarosh seconded the motion. Motion passed (Aye-5/Nay-1).

4:22 p.m. The Board recessed briefly.

4:29 p.m. The meeting reconvened in Room South B&C.

The Board was joined by Assistant Attorney General Sean Culley to create a record in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Catherine O. Tibbs**, R.Ph. (03-2-12588), Pickerington, Ohio.

4:43 p.m. The hearing ended and the record was closed.

Mr. Kolezynski 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 Vice-President Mitchell as follows: Cain – *yes*; Huwer – *yes*; Gahm – *yes*; Kolezynski – *yes*; Moné – *yes*; Yarosh – *yes*.

4:55p.m. The recess ended and the meeting was opened to the public.

R-2013-092 After votes were taken in public session, the Board adopted the following order in the matter of **Catherine O. Tibbs, R.Ph.** (03-2-12588), Pickerington, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY
(Docket Number D-120629-254)

In The Matter Of:

CATHERINE O. TIBBS, R.Ph.
10134 Oxford Drive
Pickerington, Ohio 43147
(R.Ph. Number 03-2-12588)

INTRODUCTION

The Matter of Catherine O. Tibbs came for consideration hearing on December 3, 2012, before the following members of the Board: Kevin J. Mitchell (presiding); Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Michael A. Moné, R.Ph. and Kilee S. Yarosh, R.Ph.

Brian M. Joyce, R.Ph., Absent.

Catherine O. Tibbs was not present nor was she represented by counsel. The State of Ohio was represented by Sean M. Culley, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness:

1. Robert A. Amiet, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

None

State's Exhibits:

1. Copy of Notice of Opportunity for Hearing letter [06-29-12]
1A-1A. Procedurals
2. Notarized Written Statement of Catherine O. Tibbs, R.Ph. [01-27-12]
3. Duplicate Renewal Notice [08-09-11]
4. Change of Address Notice [02-08-10]

5. Prescription Report [various dates]
6. E-License Information [01-30-12]

Respondent's Exhibits:

None

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 Catherine O. Tibbs was originally licensed in the State of Ohio on August 9, 1978, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio.
- (2) Catherine O. Tibbs did, from September 16, 2010 until approximately August 9, 2011, when not a registered pharmacist or pharmacy intern, dispense or sell dangerous drugs and/or otherwise engage in the practice of pharmacy, to wit: though Catherine O. Tibbs did not renew her license to practice pharmacy, Catherine O. Tibbs continued to practice pharmacy full time as a pharmacist at Grant Medical Center performing all manner of pharmacy practice tasks. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

CONCLUSION OF LAW

The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

After consideration of the record as a whole, the State Board of Pharmacy hereby publicly reprimands Catherine O. Tibbs for her actions in this matter.

Richard Kolezynski moved for Findings of Fact; Kilee Yarosh seconded the motion. Motion passed (Aye-6/Nay-0).

Troy Gahm moved for Conclusions of Law; Richard Kolezynski seconded the motion. Motion passed (Aye-6/Nay-0).

Michael Moné moved for Action of the Board; Kilee Yarosh seconded the motion. Motion passed (Aye-4/Nay-3).

4:56 p.m. The Board recessed for the day.

Tuesday, December 4, 2012

9:04 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:

Kevin J. Mitchell, R.Ph., *Vice-President*; Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Michael A. Moné, R.Ph. and Kilee S. Yarosh, R.Ph.

R-2013-093 Mr. Gahm moved that the Board minutes of October 10-11, 2012, be approved as amended. Ms. Huwer seconded the motion and it was approved by the Board:
Aye – 6.

R-2013-094 Mr. Kolezynski moved that the Conference Call Board minutes of October 25, 2012, be approved as written. Mr. Cain seconded the motion and it was approved by the Board:
Aye – 6.

R-2013-095 Mr. Moné moved that the Board minutes of November 5-7, 2012, be approved as amended. Mr. Kolezynski seconded the motion and it was approved by the Board:
Aye – 6.

9:11 a.m. Mr. Gahm moved that the Board go into Executive Session 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 and to discuss matters required to be confidential by law pursuant to Section 121.22(G)(5). The motion was seconded by Ms. Yarosh and a roll-call vote was conducted by Vice-President Mitchell as follows: Cain – yes; Huwer – yes; Gahm – yes; Kolezynski – yes; Moné – yes; Yarosh – yes.

10:27 a.m. The Executive Session ended and the meeting was opened to the public.

10:36 a.m. Mr. Gahm moved that the Board go into Executive Session to discuss the employment of a public employee and matters required to be confidential by law pursuant to Section 121.22(G)(1), (2) & (5) 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 Mr. Kolezynski and a roll-call vote was conducted by Vice-President Mitchell as follows: Cain – yes; Huwer – yes; Gahm – yes; Kolezynski – yes; Moné – yes; Yarosh – yes.

11:35 a.m. The Executive Session ended and the meeting was opened to the public.

R-2013-096 Mr. Moné moved that the request for continuance of adjudication hearing in the matter of **Fadi R. Smiley**, R.Ph. (03-1-27510) Dublin, Ohio, be accepted. Mr. Cain seconded the motion and it was approved by the Board: Aye – 6.

R-2013-097 Mr. Moné moved that the settlement offer in the matter of **Richard A. Mader, R.Ph.**, (03-3-10260) Tiffin, 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. Gahm and approved by the Board: Aye – 6.

11:44 a.m. The Board was joined by Assistant Attorney General Sean Culley to create a record in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Joan C. Amberik, R.Ph.** (03-2-17789) Lakewood, Ohio.

12:24 p.m. The hearing ended and the record was closed.

Mr. Kolezynski 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 Vice-President Mitchell as follows: Cain – yes; Huwer – yes; Gahm – yes; Kolezynski – yes; Moné – yes; Yarosh – yes.

12:50 p.m. The recess ended and the meeting was opened to the public.

R-2013-098 After votes were taken in public session, the Board adopted the following order in the matter of **Joan C. Amberik, R.Ph.** (03-2-17789) Lakewood, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Docket Number D-111221-235)

In The Matter Of:

JOAN CAROLYN AMBERIK, R.Ph.

2207 Wascana

Lakewood, Ohio 44107

(R.Ph. Number 03-2-17789)

INTRODUCTION

The Matter of Joan Carolyn Amberik came for consideration on December 4, 2012, before the following members of the Board: Kevin J. Mitchell, R.Ph.; (presiding); Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Michael A. Moné, R.Ph. and Kilee S. Yarosh, R.Ph.

Brian M. Joyce, R.Ph., Absent

Joan Carolyn Amberik was not present nor was she represented by counsel. The State of Ohio was represented by Sean M. Culley, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness:

1. Paul Kover, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

None

State's Exhibits:

1. Copy of Notice of Opportunity for Hearing letter [12-21-11]
1A-1A. Procedurals
2. History and Physical [09-05-10]
3. Consultation Report [09-05-10]
4. Lab Report [09-05-10]
5. Discharge Summary [09-19-10]
6. Notarized Written Statement of Laura Hagen [10-21-10]
7. Notarized Written Statement of Dave McKeal [10-21-10]
8. Notarized Statement of Lee Braggs [10-21-10]
9. Patient Prescription Profiles [06-10-11]
10. Giant Eagle Prescription Profile [not dated]
11. Target Pharmacy Prescription Profile [05-01-11 to 06-10-11]
12. Marc's Pharmacy Prescription Profile [02-18-09 to 06-29-09]
13. Cleveland Clinic Central Fill Pharmacy Prescription Profile [01-01-09 to 06-10-11]
14. Glenbeigh Patient Records [various dates]

Respondent's Exhibits:

None

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 Joan Carolyn Amberik was originally licensed in the State of Ohio on July 27, 1989, pursuant to examination, and Joan Carolyn Amberik's license to practice pharmacy in the State of Ohio lapsed on September 15, 2011.
- (2) Joan Carolyn Amberik is addicted to or abusing drugs and/or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy, to wit: Joan Carolyn Amberik has been observed practicing pharmacy in an impaired state; on September 5, 2010, Joan Carolyn Amberik was taken from her position working as a pharmacist to an emergency room due to her impaired state, and Joan Carolyn

Amberik was drug tested with positive results for THC, benzodiazepines, opiates, and tricyclic antidepressants. Regardless of the legitimacy of prescriptions for such drugs, Joan Carolyn Amberik is too impaired to safely practice pharmacy. Joan Carolyn Amberik has also been diagnosed and treated in-patient for drug dependence, and Joan Carolyn Amberik has used other drugs such as Percocet which were not prescribed. Such conduct indicates that Joan Carolyn Amberik is within the ambit of Section 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 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.

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 indefinitely suspends the pharmacist identification card, No. 03-2-17789, held by Joan Carolyn Amberik until such time as she appears before the Board demonstrating fitness to practice pharmacy.

(A) Joan Carolyn Amberik, 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) Joan Carolyn Amberik, 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.

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

Kilee Yarosh moved for Conclusions of Law; Richard Kolezynski seconded the motion. Motion passed (Aye-6/Nay-0).

Troy Gahm moved for Action of the Board; Michael Moné seconded the motion. Motion passed (Aye-5/Nay-1).

12:51 p.m. The Board recessed for lunch.

2:01 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 **Joseph F. Lutmer**, R.Ph. (03-3-16857) Cincinnati, Ohio.

3:40 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. Huwer and a roll-call vote was conducted by Vice-President Mitchell as follows: Cain – *yes*; Huwer – *yes*; Gahm – *yes*; Kolezynski – *yes*; Moné– *yes*; Yarosh – *yes*.

The Board recessed briefly.

3:51 p.m. The Board reconvened in Room East B.

4:08 p.m. The recess ended and the meeting was opened to the public.

R-2013-099 After votes were taken in public session, the Board adopted the following order in the matter of **Joseph F. Lutmer**, R.Ph. (03-3-16857) Cincinnati, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Docket Number D-121025-270)

In The Matter Of:

JOSEPH FRANCIS LUTMER, R.Ph.

3422 Paxton Avenue

Cincinnati, Ohio 45208

(R.Ph. Number 03-3-16857)

INTRODUCTION

The Matter of Joseph Francis Lutmer came for hearing on December 4, 2012., before the following members of the Board: Kevin J. Mitchell, R.Ph. (presiding); Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Michael A. Moné, R.Ph. and Kilee S. Yarosh, R.Ph.

Brian M. Joyce, R.Ph., Absent.

Joseph Francis Lutmer was represented by John L. O'Shea. The State of Ohio was represented by Sean M. Culley, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness:

1. Richard Haun, Ohio State Board of Pharmacy

Respondent's Witnesses:

1. David Klingshirn, R.Ph.
2. Joseph Francis Lutmer, R.Ph.

State's Exhibits:

1. Copy of Summary Suspension Order/Notice of Opportunity for Hearing letter [10-25-12]
1A-1D. Procedurals
2. Notarized Written Statement of Joseph Lutmer, R.Ph. [10-08-12]

Respondent's Exhibits:

- A. Copy of Summary Suspension Order/Notice of Opportunity for Hearing letter [10-25-12]
- B. Hearing Request Letter [10-30-12]; Schedule Letter [11-01-12]; Continuance Schedule Letter [11-21-12]
- C. Letter from Michael E. Freese, M.D., Hyde Park Medical Associates [11-28-12]
- D. Letter from Cheryl Schriber, LISW and Melvin S. Gale, M.D., and Associates [not dated]
- E. Letter from Elizabeth Harris, LICDC, BA, Tri Health with attached documentation [12-03-12]
- F. Copy of Newspaper Article [01-01-12]
- G. Listing of Community Service [not dated]
- H. Adapt Outpatient Client Handbook [not dated]
- I. Letters of Support [various dates]
- J. Brief of Respondent [12-03-12]

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 Joseph Francis Lutmer was originally licensed in the State of Ohio on August 03, 1987, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio. Records further reflect that Joseph Francis Lutmer is the responsible Pharmacist at Tischbein Pharmacy/Hyde Park pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Section 4729-5-11 of the Ohio Administrative Code.

- (2) Joseph Francis Lutmer is addicted to or abusing drugs or alcohol and/or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Joseph Francis Lutmer admitted that he is addicted to the use of controlled substances, namely oxycodone and diazepam. Joseph Francis Lutmer admitted to stealing drugs from his pharmacy on or around the timeframe of July 17, 2011 through September 5, 2012. Such conduct indicates that Joseph Francis Lutmer falls within the ambit of Sections 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.
- (3) Joseph Francis Lutmer did, on or about July 17, 2011 through September 5, 2012, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Tischbein Pharmacy, beyond the express or implied consent of the owner or person authorized to give consent, to wit: Joseph Francis Lutmer admitted to stealing a total of 3559 oxycodone 30 mg. tablets, a controlled substance without a valid prescription. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Joseph Francis Lutmer did, on or about July 17, 2011 through September 5, 2012, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Tischbein Pharmacy, beyond the express or implied consent of the owner or person authorized to give consent, to wit: Joseph Francis Lutmer admitted to stealing a total of 581 oxycodone 10 mg. tablets, a controlled substance without a valid prescription. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (5) Joseph Francis Lutmer did, on or about July 24, 2011 through September 5, 2012, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Tischbein Pharmacy, beyond the express or implied consent of the owner or person authorized to give consent, to wit: Joseph Francis Lutmer admitted to stealing a total of 393 diazepam 5 mg. tablets, a controlled substance without a valid prescription. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (6) Joseph Francis Lutmer did, on or about July 24, 2011 through September 5, 2012, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Tischbein Pharmacy, beyond the express or implied consent of the owner or person authorized to give consent, to wit: Joseph Francis Lutmer admitted to stealing a total of 167 diazepam 10 mg. tablets, a controlled substance without a valid prescription. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (3) through (6) of the Findings of Fact constitute being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraphs (3) through (6) 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 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 him unfit to practice pharmacy as provided in Division (A)(3) 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 Joseph Francis Lutmer on October 25, 2012.

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 03-3-16857, held by Joseph Francis Lutmer and such suspension is effective as of the date of the mailing of this Order.

(A) Joseph Francis Lutmer, 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) Joseph Francis Lutmer, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this 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 eighteen months from the effective date of this Order, the Board will consider any petition filed by Joseph Francis Lutmer 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) Joseph Francis Lutmer 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) 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) 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) Joseph Francis Lutmer must demonstrate 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.

(C) Joseph Francis Lutmer 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.

(D) If reinstatement is not accomplished within three years of the effective date of this Order, Joseph Francis Lutmer must also show successful completion of the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination approved by the Board.

(E) Upon such time as the Board may consider reinstatement, Joseph Francis Lutmer 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.

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

Kilee Yarosh moved for Conclusions of Law; Richard Kolezynski seconded the motion. Motion passed (Aye-6/Nay-0).

Troy Gahm moved for Action of the Board; Margaret Huwer seconded the motion. Motion passed (Aye-4/Nay-2).

4:08 p.m. Mr. Gahm moved that the Board go into Executive Session to confer with an attorney for the Board regarding pending or imminent court action pursuant to Section 121.22(G)(3) and to consider the employment of a public employee pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Ms. Huwer and a roll-call vote was conducted by Vice-President Mitchell as follows: Cain – *yes*; Huwer – *yes*; Gahm – *yes*; Kolezynski – *yes*; Moné – *yes*; Yarosh – *yes*.

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


R-2013-100 Mr. Gahm moved that the Board receive Per Diem as follows:

PER DIEM	10/19	11/6	12/3	12/4	Total
Cain			1	1	2
Gahm	1		1	1	3
Huwer			1	1	2
Joyce		1	0	0	1
Kolezynski			1	1	2
Mitchell		1	1	1	3
Moné		1	1	1	3
Yarosh			1	1	2

Mr. Kolezynski seconded the motion and it was approved by the Board: Aye – 6.

R-2013-101 Mr. Gahm moved that the meeting be adjourned. The motion was seconded by Ms. Yarosh and approved by the Board: Aye – 6.


 _____ Date: 5 Feb 13
 Kevin J. Mitchell, R.Ph., Vice-President


 _____ Date: 2-5-13
 Kyle W. Parker, M.B.A., R.Ph., Executive Director