



# OHIO STATE BOARD OF PHARMACY

77 South High Street, Room 1702; Columbus, OH 43215-6126

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TEL: 614/466-4143

E-MAIL: [exec@bop.state.oh.us](mailto:exec@bop.state.oh.us)

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## Settlement Agreement With The State Board Of Pharmacy Docket Number D-040205-058

*in the matter of:*

**THOMAS M. KOLCZYNSKI, R.PH.**

34036 Russell Drive  
Solon, Ohio 44139

R.Ph. Number 03-1-13647

This Settlement Agreement is entered into by and between Thomas M. Kolczynski 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. Kolczynski 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. Kolczynski acknowledges that by entering into this agreement he has waived his rights under Chapter 119. of the Revised Code.

Whereas, the Board is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, place on probation, refuse to grant or renew an identification card or enforce a monetary penalty on the license holder for violation of any of the enumerated grounds therein.

Whereas, Thomas M. Kolczynski is licensed to practice pharmacy in the State of Ohio.

Whereas, on or about February 5, 2004 and January 5, 2005, pursuant to Chapter 119. of the Ohio Revised Code, Thomas M. Kolczynski 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. Kolczynski requested a hearing; it was scheduled and continued. The Notice of Opportunity for Hearing and Amendment Notice contains the following allegations or charges:

Paragraph (1) of the Notice is jurisdictional. Paragraph (2), by agreement of the parties, will be dismissed as if it had not been issued and therefore held for naught.

(1) Records of the Board of Pharmacy indicate that Thomas M. Kolczynski was originally licensed by the State of Ohio as a pharmacist on June 23, 1980, pursuant to reciprocity, and is currently licensed to practice pharmacy in Ohio. Records further

reflect during the relevant time periods stated herein, Thomas M. Kolczynski was the Responsible Pharmacist at Medic Drug #647, 647 Broadway, Bedford, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code. Records also indicate that Thomas M. Kolczynski was previously disciplined by the Board on September 9, 1998.

Paragraph (3) is amended to read as follows:

- (3) Thomas M. Kolczynski as the Responsible Pharmacist did, on or about June 4, 2003, and dates preceding, fail to provide effective and approved controls and procedures at the pharmacy, to wit: during an audit period of April 29, 2001, through June 5, 2003, the pharmacy was missing the following controlled substances:

DRUG	SHORTAGE
OxyContin 10 mg	1
OxyContin 20 mg	23
OxyContin 40 mg	1
OxyContin 80 mg	1
MS Contin 30 mg	6
Concerta 18 mg	1

Such conduct is in violation of Rule 4729-9-05 of the Ohio Administrative Code.

Thomas M. Kolczynski neither admits nor denies the allegations as set forth above. 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. Kolczynski knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

The Board, pursuant to Section 4729.25(B) of the Ohio Revised Code, hereby admonishes Thomas M. Kolczynski to be more vigilant in his duties as the Responsible Pharmacist pursuant to Section 4729.27 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code, exercising diligence in providing effective security and control in the pharmacy.

Thomas M. Kolczynski 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. Kolczynski 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. Kolczynski waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

In the event the Board, in its discretion, does not adopt this Agreement as its Adjudication, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. Thomas M. Kolczynski agrees that should the Board reject this Agreement and if this case proceeds to hearing, he will assert no claim that the Board was prejudiced by its review and discussion of this Agreement or of any information relating thereto.

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/</u> Thomas M. Kolczynski, R.Ph., Respondent	<u>/d/</u> 11/29/05 Date Signed
<u>/s/</u> Carole Schwartz Rendon, Attorney for Respondent	<u>/d/</u> 11/29/05 Date Signed
<u>/s/</u> Suzanne R. Eastman, President, Ohio State Board of Pharmacy	<u>/d/</u> 12/06/05 Date Signed
<u>/s/</u> Sally Ann Steuk, Ohio Assistant Attorney General	<u>/d/</u> 12/06/05 Date Signed



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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-980209-037)

In The Matter Of:

**THOMAS M. KOLCZYNSKI, R.Ph.**

34036 Russell Drive

Solon, Ohio 44139

(R.Ph. No. 03-1-13647)

### INTRODUCTION

THE MATTER OF THOMAS M. KOLCZYNSKI CAME TO HEARING ON AUGUST 3, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

THOMAS M. KOLCZYNSKI WAS REPRESENTED BY STEPHEN T. PARISI, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

### SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) None

Respondent's Witnesses:

- (1) Michael W. Bukach, Pharmacy Director, Medic Drug  
(2) Mary K. Ford, Assistant Manager, Medic Drug  
(3) Thomas Kolczynski, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter of Thomas M. Kolczynski dated February 9, 1998.  
(2) Exhibit 1A--Copy of hearing request letter dated February 27, 1998.

- (3) Exhibit 1B--Copy of Hearing Schedule letter dated February 27, 1998.
- (4) Exhibit 1C--Three-page letter from Stephen T. Parisi dated April 1, 1998.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated April 8, 1998.
- (6) Exhibit 1E--Copy of Pharmacist File Front Sheet of Thomas M. Kolczynski showing original date of registration as June 23, 1980, and two-page copy of Renewal Application for Pharmacist License, No. 03-1-13647, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998 of Thomas M. Kolczynski dated July 30, 1997.
- (7) Exhibit 2--Copy of six-page Bedford Medic Drugs #647 Tax Insurance Summary of Laurie Hunt dated from April 1, 1996, to November 17, 1997.
- (8) Exhibit 2(1)--Prescription number 489414.
- (9) Exhibit 2(2)--Prescription number 497068.
- (10) Exhibit 2(3)--Prescription number 500158.
- (11) Exhibit 2(4)--Prescription number 503287.
- (12) Exhibit 2(5)--Prescription number 505553.
- (13) Exhibit 2(6)--Prescription number 514835.
- (14) Exhibit 2(7)--Prescription number 517704.
- (15) Exhibit 2(8)--Prescription number 529497.
- (16) Exhibit 2(9)--Prescription number 532153.
- (17) Exhibit 2(10)--Prescription number 539778.
- (18) Exhibit 2(11)--Prescription number 544132.
- (19) Exhibit 3--Two-page Dangerous Drug Distributor Inspection Sheet of Bedford Drug, Terminal Distributor License No. 02-0092050, dated December 20, 1997.
- (20) Exhibit 4--Letter from Thomas M. Kolczynski in response to "Pink Sheet" dated December 27, 1997; copy of Bedford Medic Drugs #647 drug information sheet regarding Amoxicillin 250mg chew; and copy of Medic Discount Drugstores prescription label, number 582935, dated December 27, 1997.
- (21) Exhibit 5--Copy of insurance claim log sheet dated January 15, 1996.
- (22) Exhibit 6--Prescription number 490229.
- (23) Exhibit 7--Explanation of Tom regarding the error of prescription number 490229.
- (24) Exhibit 8--Copy of five pages of Bedford Medic Drugs #647 Tax Insurance Summaries for Stacey Christie listing dates as follows: January 4, 1992, through December 2, 1992; December 21, 1992, through September 14, 1993; December 28, 1994, through January 15, 1996; January 15, 1996, through November 11, 1996; and January 26, 1997, through October 4, 1997.
- (25) Exhibit 9--Two-page Bedford Medic Drugs #647 Productivity and Profit Report dated December 20, 1997.

Respondent's Exhibits:

- (1) Exhibit A--Copy of Medic Drug Reminder dated May 28, 1997.
- (2) Exhibit B--Copy of blank insurance claim log sheet.
- (3) Exhibit C1--Copy of insurance claim log dated July 20, 1998.
- (4) Exhibit C2--Copy of insurance claim log dated June 20, 1998.
- (5) Exhibit C3--Copy of insurance claim log dated May 20, 1998.
- (6) Exhibit C4--Two-page copy of insurance claim log dated April 20, 1998.
- (7) Exhibit C5--Copy of insurance claim log dated March 20, 1998.
- (8) Exhibit C6--Copy of insurance claim log dated February 20, 1998.
- (9) Exhibit C7--Copy of insurance claim log dated January 20, 1998.
- (10) Exhibit C8--Copy of insurance claim log dated December 20, 1997.

- (11) Exhibit D1--Sample copy of prescription label number 610065 stating at the bottom "For pharmacy questions call 232-6580."
- (12) Exhibit D2--Sample copy of prescription label number 610065 stating at the bottom "Price - Discount".
- (13) Exhibit E1--Copy of Bedford Medic Drugs #647 Tax Insurance Summary of Carin Christie listing dates from January 25, 1996, through June 19, 1998.
- (14) Exhibit E2--Copy of Page 1 of Bedford Medic Drugs #647 Tax Insurance Summary of Sandra Christie listing dates from February 22, 1996, through November 9, 1997.
- (15) Exhibit E3--Copy of Page 2 of Bedford Medic Drugs #647 Tax Insurance Summary of Sandra Christie listing dates from February 7, 1997, through July 5, 1998.
- (16) Exhibit E4--Copy of Page 3 of Bedford Medic Drugs #647 Tax Insurance Summary of Sandra Christie listing dates from June 27, 1998, through July 21, 1998.
- (17) Exhibit E5--Copy of Page 1 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from January 4, 1996, through March 19, 1996.
- (18) Exhibit E6--Copy of Page 2 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from March 25, 1996, through December 17, 1996.
- (19) Exhibit E7--Copy of Page 3 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from December 21, 1996, through March 17, 1997.
- (20) Exhibit E8--Copy of Page 4 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from February 17, 1997, through April 8, 1997.
- (21) Exhibit E9--Copy of Page 5 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from May 13, 1997, through April 25, 1997.
- (22) Exhibit E10--Copy of Page 6 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from April 29, 1997, through June 9, 1997.
- (23) Exhibit E11--Copy of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from June 9, 1997, through June 20, 1997.
- (24) Exhibit E12--Copy of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from June 23, 1997, through September 4, 1997.
- (25) Exhibit E13--Copy of Page 9 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from September 4, 1997, through May 1, 1998.
- (26) Exhibit E14--Copy of Page 10 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from February 19, 1998, through May 11, 1998.
- (27) Exhibit E15--Copy of Page 11 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from May 21, 1998, through July 16, 1998.
- (28) Exhibit E16--Copy of Page 12 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie dated from January 1, 1996, through July 22, 1998.
- (29) Exhibit E17--Copy of Page 1 of Bedford Medic Drugs #647 Tax Insurance Summary of John Christie, Jr. listing dates from January 19, 1996, through June 8, 1996.
- (30) Exhibit E18--Copy of Page 1 of Bedford Medic Drugs #647 Tax Insurance Summary of Jeffrey Christie listing date of January 9, 1996.
- (31) Exhibit E19--Copy of Page 1 of Bedford Medic Drugs #647 Tax Insurance Summary of Jeff Christie, Jr. listing dates from July 15, 1996, through April 21, 1998.
- (32) Exhibit F1--Page 1 of letter on Medic Drug letterhead written to the Ohio State Board of Pharmacy dated July 14, 1998.
- (33) Exhibit F2--Page 2 of letter to the Ohio State Board of Pharmacy from Nathan S. Lipsyc dated July 14, 1998.
- (34) Exhibit G--Letter from Gerald M. Zlotnik dated July 15, 1998.
- (35) Six-page Pharmacist Hearing Memorandum Before the Ohio State Board of Pharmacy in Re: Thomas M. Kolczynski, Hearing Date: August 3, 1998; two-page Appendix to Pharmacist Hearing Memorandum; and the following copied attachments: Respondents Exhibits A, B, C1, C2, C3, C4, C5, C6, C7, C8, State's Exhibit 4, Respondents Exhibits D1, D2, E1, E2, E3, E4, E5, E6, E7, E8, E9, E10, E11, E12, E13, E14, E15, E16, E17, E18, E19, F1, F2, G, and State's Exhibit 8.

## FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Thomas M. Kolczynski was originally licensed in the state of Ohio on June 23, 1980, pursuant to reciprocity, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that Thomas M. Kolczynski is the Responsible Pharmacist at Bedford Medic Drug, 647 Broadway, Bedford, Ohio pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) Thomas M. Kolczynski did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Thomas M. Kolczynski sold 28 units of Phentermine HCl 37.5mg for diet to the same patient pursuant to the following prescriptions which were not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, and thereby failing to fulfill his corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code:

<u>Rx No.</u>	<u>Written</u>	<u>Filed</u>	<u>Drug</u>	<u>Doctor</u>
489414	01/04/96	01/08/96	Adipex-P 37.5mg	Wehrum
497068	03/01/96	03/04/96	Adipex-P 37.5mg	Wehrum
500158	03/26/96	03/27/96	Adipex-P 37.5mg	Wehrum
503287	04/09/96	04/18/96	Phentermine 37.5mg	Wehrum
505553	04/27/96	05/06/96	Phentermine 37.5mg	Wehrum
514835	07/04/96	07/20/96	Adipex-P 37.5mg	Wehrum
517704	08/13/96	08/13/96	Adipex-P 37.5mg	Wehrum
529497	11/07/96	11/12/96	Adipex-P 37.5mg	Wehrum
532153	11/21/96	12/02/96	Adipex-P 37.5mg	Wehrum
539778	12/23/96	01/24/97	Phentermine 37.5mg	Wehrum
544132	02/21/97	02/25/97	Phentermine 37.5mg	Wehrum

Such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (3) Thomas M. Kolczynski did, on or about January 15, 1996, misbrand a drug and/or sell a misbranded drug, to wit: Thomas M. Kolczynski dispensed Lanoxin 0.25mg when the prescriber had prescribed Digoxin 0.125mg pursuant to prescription number 490229. The patient, a 12-year-old child, ingested the medication over a period of time, and experienced dizziness, nausea, and vomiting for approximately ten days. When a Board Specialist inquired as to the error and his lack of corrective action, Thomas M. Kolczynski indicated that he did not feel he needed to make changes [i.e., in stocking the pharmacy], that he "would probably make more errors during [his] career." Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.

### CONCLUSION OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Section 3715.52 and Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

### ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and the Findings of Fact and Conclusion of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of two hundred fifty dollars (\$250.00) due and owing within thirty days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.