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## **Minutes of the June 4-6, 2007** **Meeting of the Ohio State Board of Pharmacy**

### **MONDAY, JUNE 4, 2007**

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:

James E. Turner, R.Ph., *President*; Gregory Braylock, R.Ph., *Vice-President*; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

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

### **R-2007-208**

Mr. Winsley announced that the following settlement agreement in the matter of **Ross Putman Turner**, D.O., R.Ph. 03-2-23163, Canal Winchester, Ohio, has been signed by all parties and is now effective:

### **SETTLEMENT AGREEMENT WITH THE OHIO STATE BOARD OF PHARMACY**

Docket Number D-070515-049

*in the matter of:*

**ROSS PUTMAN TURNER, D.O., R.PH.**

6442 Dietz Drive  
Canal Winchester, Ohio 43110

R.Ph. Number 03-2-23163

This Settlement Agreement is entered into by and between Ross Putman Turner 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.

Ross Putman Turner 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 and the right to a formal adjudication hearing on the issues contained herein.

Ross Putman Turner is knowingly and voluntarily acknowledging that, in order to settle possible disciplinary charges and in order to obviate the need to conduct an administrative hearing to consider possible disciplinary sanctions against Ross Putman Turner's license to practice pharmacy in the State of Ohio, this

Agreement is entered into on the basis of the following stipulations, admissions, and understandings:

- (1) The Ohio State Board of Pharmacy 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 impose a monetary penalty on the license holder for violation of any of the enumerated grounds.
- (2) Records of the Board of Pharmacy indicate that Ross Putman Turner was originally licensed by the State of Ohio as a pharmacist on August 20, 1998, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio.
- (3) Ross Putman Turner is addicted to liquor and/or drugs, to wit: Ross Putman Turner has admitted to The State Medical Board of Ohio, and to an Agent with the Ohio State Board of Pharmacy, that he has an addiction problem with alcohol and/or drugs. Such conduct indicates that Ross Putman Turner falls within the ambit of Sections 3719.121 and 4729.16(A)(3) of the Ohio Revised Code.
- (4) On or about March 14, 2007, Ross Putman Turner signed a Consent Agreement, with The State Medical Board of Ohio which suspended his license indefinitely, but not less than one hundred-eighty (180) days.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Ross Putman Turner knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) The Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-2-23163, held by Ross Putman Turner. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Ross Putman Turner may not be employed by or work in a facility licensed by the Board to possess or distribute dangerous drugs during such period of suspension. Division (B) of Section 4729.16 of the Revised Code provides that: "Any individual whose identification card is revoked, suspended, or refused, shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of the notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested. Further, if Ross Putman Turner desires to regain licensure to practice pharmacy, he must petition the Board, pursuant to a Revised Code Chapter 119. hearing, for reinstatement of his license to practice pharmacy in Ohio.
- (B) Ross Putman Turner must comply with his State Medical Board of Ohio Step I Consent Agreement dated March 14, 2007.
- (C) Ross Putman Turner 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.
- (D) Ross Putman Turner must provide, at the reinstatement petition hearing, documentation of the following:
  - (1) Compliance with his Step I Consent Agreement as required above and with all treatment programs (e.g.-copies of all drug and alcohol screen reports, support 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 Agreement.

- (E) If reinstatement is not accomplished within three years of the effective date of this Agreement, Ross Putman Turner must also show successful completion of the NAPLEX and MPJE examinations or equivalent examinations approved by the Board.

Ross Putman Turner 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.

Ross Putman Turner 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. Ross Putman Turner 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.

/s/ Ross Putman Turner, D.O., R.Ph.  
Respondent Date Signed: 05/23/07

/s/ Elizabeth Y. Collis  
Attorney for Respondent Date Signed: 05/29/07

/s/ James E. Turner, President  
Ohio State Board of Pharmacy Date Signed: 06/04/07

/s/ Sally Ann Steuk  
Ohio Assistant Attorney General Date Signed: 06/04/07

10:01 a.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code and to confer with an attorney for the Board regarding pending or imminent court action pursuant to Section 121.22(G)(3) of the Ohio Revised Code. The motion was seconded by Mr. Lipsyc and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

10:58 a.m. The Executive Session ended and the meeting was opened to the public.

The Board recessed briefly.

11:07 a.m. Mr. Keeley discussed the Legislative Report with the Board.

The Board discussed **InstyMeds'** (Mendota HealthCare, Mendota, Illinois) request for approval of its electronic dispensing system.

12:22 p.m. The Board recessed for lunch.

1:32 p.m. The Board reconvened with all members present.

The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **John Shell**, R.Ph., 03-2-18094, Loveland, Ohio.

1:58 p.m. The hearing ended and the record was closed.

1:59 p.m. Mr. Mitchell moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mrs. Gregg and a roll-call vote was conducted by President Turner as follows: Braylock- yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

2:09 p.m. The Executive Session ended and the meeting was opened to the public.

**R-2007-209** Mr. Braylock moved that the Board adopt the following order in the matter of **John Shell**, R.Ph., 03-2-18094, Loveland, Ohio.

### **ORDER OF THE STATE BOARD OF PHARMACY**

Docket Number D-070412-039

*in the matter of:*

**JOHN SHELL, R.PH.**  
6387 Branchill-Miamiville Road  
Loveland, Ohio 45140

R.Ph. Number 03-2-18094

### **INTRODUCTION**

The matter of John Shell came for hearing on June 4, 2007, before the following members of the Board: James E. Turner, R.Ph. (*presiding*); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

John Shell was represented by Kevin P. Byers. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

### **SUMMARY OF EVIDENCE**

State's Witnesses: None

Respondent's Witness: John Shell, R.Ph., Respondent

#### State's Exhibits:

1. Reinstatement Hearing Request letter from Kevin P. Byers [04-11-07]  
1A-1E. Procedurals
2. State Board of Pharmacy Order In Re John Shell, R.Ph. [04-07-06]

#### Respondent's Exhibits:

- A. PRO Pharmacist's Recovery Contract for John Shell [04-30-06]
- B. FirstLab Test History Report [09-27-05 to 03-13-07]; NWT MedPro Panel "E" [updated 02-10-05]
- C. Drug Screen Reports [03-03-06 to 04-30-07]
- D. Support Group Attendance Records [04-03-06 to 04-28-07]

- E-F. Two Letters from Diane Brock, LICDC to John Shell [07-06-06 and 08-14-06]
- G. Letter from John H. Keyser, R.Ph. [04-19-07]
- H. Continuing Pharmaceutical Education Credits and Certificates [04-30-06 to 04-22-07]
- I. Letter from James F. Liebetrau, R.Ph. [05-22-07]
- J. Letter from Michael D. Quigley, R.Ph. [05-22-07]; FirstLab Test History Report [09-27-05 to 05-12-07]
- K. Support Group Attendance Records [04-30-07 to 05-30-07]

### **FINDING OF FACT**

After having heard the testimony, observed the demeanor of the witness, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds that John Shell has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-050208-045, effective April 7, 2006.

### **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, No. 03-2-18094, held by John Shell to practice pharmacy in Ohio and places John Shell on probation for five years beginning on the effective date of this Order, with the following conditions:

- (A) John Shell 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 his 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 to the Board reports, in a format acceptable to the Board, indicating drug screens and their results in a timely fashion. Actual copies of drug screens shall be made available to the Board upon request.
  - (3) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.

- (4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (B) John Shell 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 John Shell's progress towards recovery and what John Shell 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 John Shell'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) John Shell may not serve as a responsible pharmacist.
  - (3) John Shell may not destroy, assist in, or witness the destruction of controlled substances.
  - (4) John Shell must abide by the contract with his treatment provider and must immediately report any violation of the contract to the Board.
  - (5) John Shell must not violate the drug laws of Ohio, any other state, or the federal government.
  - (6) John Shell must abide by the rules of the State Board of Pharmacy.
  - (7) John Shell must comply with the terms of this Order.
  - (8) John Shell '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.

John Shell 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.

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

**R-2007-210**

After discussion, Mr. Giacalone moved that the Board find the proposed central-fill system between **CuraScript IP Infusion Pharmacy**, (02-0935650), Westerville, Ohio, and **CuraScript IP Infusion Pharmacy**, (02-1144950), Lancaster, Ohio to be approvable pending final inspection. Mr. Mitchell seconded the motion and it was approved by the Board: Aye – 8.

**R-2007-211**

The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

**Teregen Laboratories**, Willoughby, Ohio (02-1235150)  
Various Physician Offices listed on letter of request

After discussion, Mrs. Gregg moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Ms. Eastman and approved by the Board: *Aye* – 8.

The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

**Northside Pharmacy Nursing Home Division**, Zanesville, Ohio (02-0825250)  
**Genesis Hospice and Palliative Care**, Zanesville, Ohio (02-1052050)

After discussion, Mrs. Gregg moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Ms. Eastman and approved by the Board: *Aye* – 8.

**R-2007-212**

The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

**Northside Pharmacies** (multiple pharmacies)  
**Genesis Health and Rehab**, Zanesville, Ohio (02-0825700)

After discussion, Mrs. Gregg moved that the Board deny the request as it failed to meet the requirements for an exemption. The motion was seconded by Mrs. Teater and approved by the Board: *Aye* – 8.

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

Mr. Mitchell reported on the latest meeting of the Physician Assistant Policy Committee.

Ms. Eastman said there were no problems to report concerning probations.

Mrs. Teater discussed the Ohio State University White Coat Ceremony.

2:53 p.m. Mr. Braylock left the meeting for personal reasons.

3:14 p.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Willis J. Breen**, R.Ph., Hinesburg, Vermont.

3:59 p.m. The hearing ended and the record was closed.

3:59 p.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Ms. Pasquale and a roll-call vote was conducted by President Turner as follows: Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

4:08 p.m. The Executive session and the meeting was opened to the public.

**R-2007-213**

Mrs. Gregg moved that the Board adopt the following order in the matter of **Willis J. Breen**, R.Ph., Hinesburg, Vermont.

**ORDER OF THE STATE BOARD OF PHARMACY**

Docket Number D-070508-046

*in the matter of:*

**WILLIS J. BREEN, R.Ph.**  
178 North Road  
Hinesburg, Vermont 05461

**INTRODUCTION**

The matter of Willis J. Breen came for hearing on June 4, 2007, before the following members of the Board: James E. Turner, R.Ph. (*presiding*); Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Willis J. Breen was not represented by counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

**SUMMARY OF EVIDENCE**

State's Witnesses: Robert L. Cole, Board of Pharmacy  
Willis Breen, R.Ph., Respondent

Respondent's Witnesses: None

State's Exhibits:

1. Proposal to Deny/Notice of Opportunity For Hearing letter [05-08-07]  
1A-1D. Procedurals
2. National Association of Boards of Pharmacy Application for Transfer of Pharmacist Licensure to the State of Ohio [04-27-07]
3. National Association of Boards of Pharmacy Notification of Disciplinary Action in re Willis J. Breen [03-30-07]
4. Specification of Charges, Stipulation and Consent Order in re Willis J. Breen, Jr., Vermont Board of Pharmacy [01-26-00]
5. Stipulation and Consent Order in re Willis J. Breen, Jr., Vermont Board of Pharmacy [03-03-04]

Respondent's Exhibits:

- A. Polygraph Examination Results [07-30-04]
- B. State of Vermont Department of Corrections Reparative Probation Information and Notice [05-22-03]; Addison County Reparative Agreement [05-27-03]
- C. Petition for Discharge from Probation, State of Vermont v. Willis Breen, Docket No. 395-1-03, District Court of Vermont [11-16-03]
- D. Maple Leaf Farm Treatment Program Information, [www.wdovt.com/mapleleaf/treatment/int\\_care](http://www.wdovt.com/mapleleaf/treatment/int_care) [06-02-07]
- E. Letter from Denis Dees M.A., L.A.D.C. Counselor, [05-09-07]
- F-G. Two Letters of Support [05-30-07 to 06-02-07]

**FINDINGS OF FACT**

- (1) Willis J. Breen is a registered pharmacist in the State of Vermont, and on or about April 27, 2007 Willis J. Breen applied for reciprocal registration into the State of Ohio.



- (2) Willis J. Breen was disciplined by the Vermont Board of Pharmacy on January 26, 2000, for allowing non-pharmacists to accept telephoned prescriptions. The Vermont Board of Pharmacy deemed this conduct unprofessional conduct for violating Vermont statutes and Board rules. Willis J. Breen was reprimanded for his conduct. Such discipline constitutes having been disciplined by a state board of pharmacy within the meaning of Rule 4729-5-04 of the Ohio Administrative Code.
- (3) Willis J. Breen was disciplined by the Vermont Board of Pharmacy on December 1, 2004, for practicing pharmacy on January 11, 2003, while having a "clear odor of alcohol" on his breath; and for having been convicted on March 12, 2003, of DUI and Negligent Operation. Willis J. Breen had tested 0.215 BAC. The Vermont Board of Pharmacy deemed this conduct unprofessional conduct for violating Vermont statutes. Willis J. Breen was reprimanded for his conduct. Such discipline constitutes having been disciplined by a state board of pharmacy within the meaning of Rule 4729-5-04 of the Ohio Administrative Code.

#### **CONCLUSIONS OF LAW**

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 Willis J. Breen qualifies for reciprocal registration.

#### **DECISION OF THE BOARD**

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

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

The Board again discussed **InstyMeds** (Mendota HealthCare, Mendota, Illinois), and agreed to delay a decision until a later date.

#### **R-2007-214**

Mr. Keeley discussed the Electronic Prescription Transmission System proposal from **Health Alliance of Greater Cincinnati** with the Board. Mr. Giacalone moved that the system be found approvable pending final inspection. The motion was seconded by Mr. Mitchell and approved by the Board: Aye – 7.

#### **R-2007-215**

Mr. Keeley discussed the following proposed Board Resolution:

For the purpose of paragraph (A)(1) of rule 4729-3-05 of the Administrative Code, a school of pharmacy approved by the state board of pharmacy includes those schools that have been accredited by Accreditation Council for Pharmacy Education or have received A.C.P.E. pre-candidate status or candidate status, and are located within a state, U.S. territory, or U.S. district.

Mrs. Teater moved that the Resolution be accepted and the motion was seconded by Ms. Pasquale. It was approved by the Board: Aye – 7.

Mr. Keeley discussed the remote order entry proposal from **Advanced Pharmacy Staffing**, Las Vegas, Nevada. The Board, by consensus, tabled the proposal pending receipt of additional information.

Mr. Keeley then discussed with the Board a meeting he recently attended concerning HB130.

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

4:53 p.m. The Board recessed for the day.

**TUESDAY, JUNE 5, 2007**

9:06 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:

James E. Turner, R.Ph., *President*; Gregory Braylock, R.Ph., *Vice-President*; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

9:07 a.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Lino DiMatteo**, R.Ph., 03-1-26154, Munroe Falls, Ohio.

10:10 a.m. The Board recessed briefly.

10:25 a.m. The hearing in the matter of **Lino DiMatteo**, R.Ph., continued.

11:42 a.m. The hearing ended and the record was closed.

11:43 a.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, 77 South High Street, Columbus, Ohio, with all members present.

**R-2007-216** The following candidates for licensure by reciprocity introduced themselves and participated in a discussion of pharmacy laws and rules with Mr. McMillen in Room South A, 31<sup>th</sup> Floor, the Vern Riffe Center. They were then presented their pharmacist identification cards.

Christine Jilleen Gray	03-1-27932	Kentucky
Daniel Scott Himes	03-1-27950	Pennsylvania
John Khalil Khoury	03-1-27931	Missouri
Mona Khoury	03-1-27812	Virginia
Mark Patrick Masterson	03-1-27870	Michigan
Terry Taehee Namkoong	03-1-27692	Arizona
Heather Leigh Novak	03-1-27846	Pennsylvania
Todd Matthew O'Neil	03-1-27936	New York
Helen Pruitt	03-1-28001	Kentucky
Sameh M. Ragab	03-1-27858	South Carolina
Srikanth M. Shivakumar	03-1-28002	Michigan
Mark Eric Smith	03-1-27924	West Virginia
Garry Edward Taylor	03-1-27811	Alabama

1:59 p.m. The Board reconvened in room East B, 31<sup>st</sup> Floor, of the Vern Riffe Center for Government and the Arts with all members present.

The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **John Ekiert**, R.Ph., 03-1-24554, Canfield, Ohio.

4:58 p.m. The hearing ended and the meeting was opened to the public.

Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Lipsyc and a roll-call vote was conducted by

President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

5:22 p.m. The Executive Session ended and the meeting was opened to the public.

**R-2007-217** Mrs. Teater moved that the Board adopt the following order in the matter of **Lino DiMatteo**, R.Ph., 03-1-26154, Munroe Falls, Ohio.

**ORDER OF THE STATE BOARD OF PHARMACY**

Docket Number D-060613-086

*in the matter of:*

**LINO DIMATTEO, R.PH.**

85 Bermont Avenue  
Munroe Falls, Ohio 44262

R.Ph. Number 03-1-26154

**INTRODUCTION**

The matter of Lino DiMatteo came for hearing on June 5, 2007, before the following members of the Board: James E. Turner, R.Ph. (*presiding*); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Lino DiMatteo was not represented by counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

**SUMMARY OF EVIDENCE**

State's Witnesses: Robert Amiet, Jr., R.Ph.,  
Ohio State Board of Pharmacy  
Lino DiMatteo, R.Ph., Respondent

Respondent's Witnesses: None

State's Exhibits:

1. Notice of Opportunity For Hearing letter [06-13-06]  
1A-1E. Procedurals  
1F. Summary Suspension Order/Notice of Opportunity for Hearing [12-29-06]  
1G-II. Procedurals
2. Rx #2454876 [09-10-04]
3. Rx #2455104 [09-23-04]
4. Lake County Crime Laboratory Report [07-12-05]
5. Letter from the New Jersey State Board of Medical Examiners License Verification [08-09-05]
6. Copy of New Jersey Prescription Form [not dated]
7. Rx #2227261 [10-13-04]
8. Rx #2227407 [10-28-04]
9. Rx #2227562 [11-11-04]
10. Rx #2227697 [11-24-04]
11. Rx 2227798 [12-05-04]
12. Rx #2209515 [12-26-04]
13. Rx #2209591 [01-11-05]
14. Application for Registration As A Distributor of Dangerous Drugs for Hood's Pharmacy [04-25-06]

15. Complaint, State of Ohio vs. Lino DiMatteo, Case No. 05-1074, Franklin County Municipal Court [01-13-05]
16. Indictment, State of Ohio v. Lino DiMatteo, Case No. 05CR11-7356, Franklin County Common Pleas Court [11-01-05]; Entry [03-09-06]
17. Transcript of Sentencing [01-05-06]
- 17A. Transcript of Sentencing [03-07-06]
18. Indictment, State of Ohio vs. Lino DiMatteo, Case No. 06CR-05-4144, Franklin County Common Pleas Court [05-31-06]; Entry Plea [12-06-06]; Judgment Entry [01-29-07]

Respondent's Exhibits:

- A. Report from James J. Sardo, M.D. [02-22-07]; The Drug Store Patient Profile of Lino DiMatteo [01-01-06 to 05-30-07]

**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 Lino DiMatteo was originally licensed by the State of Ohio as a pharmacist on May 4, 2004, pursuant to reciprocity, and that his license to practice pharmacy in Ohio was summarily suspended effective December 29, 2006.
- (2) Lino DiMatteo did, on or about the following dates, intentionally make or utter and/or knowingly possess false or forged prescriptions, to wit: Lino DiMatteo created and possessed the following prescriptions for OxyContin 40 mg, a Schedule II controlled substance, not for a legitimate medical purpose:

<u>DATE</u>	<u>QTY</u>	<u>Rx #</u>
09-07-04	60	2454876
09-20-04	120	2455104

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

- (3) Lino DiMatteo did, on or about the following dates, intentionally make or utter and/or knowingly possess false or forged prescriptions, to wit: Lino DiMatteo created and possessed the following prescriptions for oxycodone 30 mg, a Schedule II controlled substance, not for a legitimate medical purpose:

<u>DATE</u>	<u>QTY</u>	<u>Rx #</u>
10-11-04	120	2227261
10-25-04	120	2227407
11-08-04	120	2227562
11-22-04	120	2227697
12-03-04	20	2227798
12-13-04	20	2209515
01-11-05	120	2209591

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

- (4) Lino DiMatteo did, on or about December 26, 2004, knowingly possess a controlled substance when the conduct was not in accordance with

Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Lino DiMatteo purchased and subsequently possessed 120 tablets of oxycodone, a Schedule II controlled substance, pursuant to a false and/or forged prescription. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.

- (5) Lino DiMatteo did, on or about April 21, 2006, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Lino DiMatteo indicated on a terminal distributor application, for which he was to be the Responsible Pharmacist, that he had not been charged or convicted of a crime when in fact he had been charged with Illegal Processing of Drug Documents and Lino DiMatteo pled guilty to Attempted Illegal Processing of Drug Documents. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.
- (6) On March 7, 2006, Lino DiMatteo pled guilty to one (1) count of Attempted Illegal Processing of Drug Documents, a misdemeanor of the first degree under Section 2923.02 of the Ohio Revised Code. State of Ohio vs. Lino DiMatteo, Case No. 05CR11-7356, Franklin County Common Pleas Court.
- (7) On or about December 4, 2006, Lino DiMatteo pled guilty to four (4) counts of Illegal Processing of Drug Documents, felonies of the fourth degree, under Section 2925.23 of the Ohio Revised Code. State of Ohio vs. Lino DiMatteo, Case No. 06-CR-4144, Franklin County Common Pleas Court.

#### **CONCLUSIONS OF LAW**

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (7) 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 (2) through (7) 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 (6) of the Findings of Fact constitutes being 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.
- (4) The State Board of Pharmacy concludes that paragraph (2) through (4) and (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.
- (5) The State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitutes being guilty of committing fraud, misrepresentation, or deception in applying for or securing a license or identification card issued by the Board under Chapter 4729. of the Revised Code as provided in Division (A)(10) of Section 4729.16 of the Ohio Revised Code

#### **DECISION OF THE BOARD**

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Lino DiMatteo on December 29, 2006.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Lino DiMatteo as follows:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-26154, held by Lino DiMatteo effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-26154, held by Lino DiMatteo effective as of the date of the mailing of this Order.
- (C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-26154, held by Lino DiMatteo effective as of the date of the mailing of this Order.
- (D) On the basis of the Findings of Fact and paragraph (4) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-26154, held by Lino DiMatteo effective as of the date of the mailing of this Order.
- (E) On the basis of the Findings of Fact and paragraph (5) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-26154, held by Lino DiMatteo effective as of the date of the mailing of this Order.

Lino DiMatteo, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his license to practice (pocket ID card) and registration (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.

The motion was seconded by Mr. Braylock and approved by the Board: Aye – 8.

**R-2007-218**

Mr. Braylock moved that the Board adopt the following order in the matter of **John Ekiert**, R.Ph., 03-1-24554, Canfield, Ohio.

**ORDER OF THE STATE BOARD OF PHARMACY**

Docket Number D-060315-065

*in the matter of:*

**JOHN JOSEPH EKIERT, R.PH.**

6136 Southern Hills Court  
Canfield, Ohio 44406

R.Ph. Number 03-1-24554

**INTRODUCTION**

The matter of John Joseph Ekiert came for hearing on June 5, 2007, before the following members of the Board: James E. Turner, R.Ph. (*presiding*); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

John Joseph Ekiert was represented by Catherine M. Ballard and Sean McGlone. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

### SUMMARY OF EVIDENCE

State's Witness: George Pavlich, Ohio State Board of Pharmacy

Respondent's Witnesses: John Joseph Ekiert, R.Ph., Respondent  
Wanda Mrozek, R.Ph.  
Robert Ekiert, R.Ph.  
Gregory Stephen Zinni, M.D.

#### State's Exhibits:

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [03-15-06]
  - 1A-1B. Procedurals
  - 1C. Addendum Notice [05-22-06]
  - 1D-1E. Procedurals
  - 1F. Addendum Notice [01-31-07]
  - 1G-1I. Procedurals
2. Seven color photographs [not dated]
- 2A. Mahoning Valley Law Enforcement Task Force Investigative Report, Case File 05-09/182 [03-07-06]
3. Thirteen photographs [03-07-06]
4. Notarized Statement of John Ekiert, R.Ph. [03-08-06]
5. Bureau of Criminal Identification and Investigation Laboratory Report [04-24-06]
6. Mahoning Valley Law Enforcement Task Force Investigative Report, Case File 05-09/182 [09-30-05]
7. Bureau of Criminal Identification and Investigation Laboratory Report [10-17-05]
8. Mahoning Valley Law Enforcement Task Force Investigative Report, Case File 05-09/182 [02-03-06]
9. Bureau of Criminal Identification and Investigation Laboratory Report [03-03-06]
10. Mahoning Valley Law Enforcement Task Force Investigative Report, Case File 05-09/182 [02-13-06]
11. Bureau of Criminal Identification and Investigation Laboratory Report [03-09-06]
12. Mahoning Valley Law Enforcement Task Force Investigative Report, Case File 05-09/182 [02-16-06]
13. Mahoning Valley Law Enforcement Task Force Investigative Report, Case File 05-09/182 [02-25-06]
14. Bureau of Criminal Identification and Investigation Laboratory Report [03-30-06]
15. Copy of three Photographs [02-25-06]
16. Four Drug Accountability Statements at Hometown Pharmacy for Vicodin ES 7.5/750; Vicodin 5/500; Vicodin HP 10/660; Lortab 7.5/500 [03-07-06]
17. DEA Report of Theft or Loss of Controlled Substances of Hometown Pharmacy [05-16-06]
18. Waiver of Indictment, State of Ohio v. John Ekiert, Case No. 06CR1149, Mahoning County Common Pleas Court [10-24-06]; Plea of Guilty [12-04-06]; Judgment Entry [02-05-07]

#### Respondent's Exhibits:

- A. Neil Kennedy Recovery Clinic Discharge Summary [07-27-06]
- B. Support Group Attendance Records [03-20-06 to 05-30-07]

- C. Affidavit of Harry Wollet [05-29-07]
- D. Affidavit of Kathleen Shannon [05-31-07]
- E. Affidavit of Stuart Strasfeld [05-07]
- F. Affidavit of Mark Strine [05-31-07]
- G. Affidavit of Garry L. Mrozek [05-31-07]

#### **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 John Joseph Ekiert was originally licensed by the State of Ohio as a pharmacist on April 3, 2001, pursuant to reciprocity, and that his license was summarily suspended on March 15, 2006. Records further reflect during the relevant time periods stated herein, John Joseph Ekiert was the Responsible Pharmacist at The Hometown Pharmacy, 3623 South Meridian Road, Youngstown, 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) John Joseph Ekiert did, on or about March 7, 2006, 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 not for a legitimate medical purpose, John Joseph Ekiert sold 1,300 hydrocodone/APAP 7.5/750 mg tablets to an individual who in turn intended to sell the drugs to others. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (3) John Joseph Ekiert did, on or about July 28, 2005, 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 not for a legitimate medical purpose, John Joseph Ekiert sold 100 hydrocodone/APAP 7.5/750 mg tablets to an individual who in turn sold the drugs to others. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (4) John Joseph Ekiert did, on or about February 3, 2006, 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 not for a legitimate medical purpose, John Joseph Ekiert sold at least 290 hydrocodone/APAP 7.5/750 mg tablets to an individual who in turn sold the drugs to others. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (5) John Joseph Ekiert did, on or about February 13, 2006, 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 not for a legitimate medical purpose, John Joseph Ekiert sold at least 100 hydrocodone/APAP 7.5/750 mg tablets to an individual who in turn sold the drugs to others. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (6) John Joseph Ekiert did, on or about February 16, 2006, 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 not for a legitimate medical purpose, John Joseph Ekiert sold 100 hydrocodone/APAP 7.5/750 mg tablets to an individual who in turn sold the drugs to others. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.



- (7) John Joseph Ekiert did, on or about February 25, 2006, 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 not for a legitimate medical purpose, John Joseph Ekiert sold 100 hydrocodone/APAP 7.5/750 mg tablets to an individual who in turn sold the drugs to others. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (8) John Joseph Ekiert did, from May 21, 2001, through March 7, 2006, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Hometown Pharmacy, beyond the express or implied consent of the owner, to wit: John Joseph Ekiert stole the following Schedule III controlled substances from his employer:

hydrocodone bitartrate/APAP 7.5/750 mg	15,718
hydrocodone bitartrate/APAP 5/500 mg	1,282
hydrocodone bitartrate/APAP 10/660 mg	289
hydrocodone/APAP 7.5/500 mg	140

Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (9) On or about December 4, 2006, John Joseph Ekiert pled guilty to four (4) counts of Conspiracy to Trafficking in Drugs, felonies of the fourth degree, under Sections 2923.01 and 2923.03(A)(1)(C)(2)(d) of the Ohio Revised Code and one (1) count of Trafficking in Drugs, a felony of the fourth degree, under Section 2925.03 (A)(1)(C)(2)(c) of the Ohio Revised Code. State of Ohio vs. John Ekiert, Case No. 06CR1149, Mahoning County Common Pleas Court.

#### **CONCLUSIONS OF LAW**

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (9) 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 (2) through (9) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (3) The State Board of Pharmacy concludes that paragraphs (2) through (7) and (9) 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 Chapters 2925. and 3719. 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 John Joseph Ekiert on March 15, 2006.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of John Joseph Ekiert as follows:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-24554, held by John Joseph Ekiert effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-24554, held by John Joseph Ekiert effective as of the date of the mailing of this Order.
- (C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-24554, held by John Joseph Ekiert effective as of the date of the mailing of this Order.
- (D) On the basis of the Findings of Fact and paragraph (4) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-24554, held by John Joseph Ekiert effective as of the date of the mailing of this Order.

John Joseph Ekiert, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his license to practice (pocket ID card) and registration (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.

Mrs. Gregg seconded the order and it was approved by the Board: *Aye – 7/Nay – 1.*

5:32 p.m. The Board recessed for the day.

### **WEDNESDAY, JUNE 6, 2007**

9:07 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:

James E. Turner, R.Ph., *President*; Gregory Braylock, R.Ph., *Vice-President*; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Aaron Craig Link**, R.Ph., 03-1-22513, Chardon, Ohio.

12:48 p.m. The hearing ended and the meeting was opened to the public.

The Board recessed for lunch.

2:00 p.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Harold Schwartz**, R.Ph., 03-2-08013, Lyndhurst, Ohio.

Mr. Turner and Mr. Lipsyc recused themselves from the hearing. Vice-President Braylock assumed the chair for the hearing.

3:31 p.m. The hearing ended and the meeting was opened to the public.

3:32 p.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Ms. Pasquale and a roll-call vote was conducted by Vice-President Braylock as follows: Eastman – yes; Giacalone – yes; Gregg – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

3:51 p.m. The Executive Session ended and the meeting was opened to the public.

**R-2007-219** Mr. Mitchell moved that the Board adopt the following order in the matter of **Harold Schwartz**, R.Ph., 03-2-08013, Lyndhurst, Ohio.

### **ORDER OF THE STATE BOARD OF PHARMACY**

Docket Number D-060405-067

*in the matter of:*

**HAROLD SCHWARTZ, R.Ph.**

1958 Camberly Drive  
Lyndhurst, Ohio 44124

R.Ph. Number 03-2-08013

### **INTRODUCTION**

The matter of Harold Schwartz came for hearing on June 6, 2007, before the following members of the Board: Gregory Braylock, R.Ph. (*presiding*); Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Harold Schwartz was represented by Jules N. Koach. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

### **SUMMARY OF EVIDENCE**

State's Witnesses: None

Respondent's Witness: Harold Schwartz, R.Ph., Respondent

State's Exhibits:

1. Notice of Opportunity For Hearing letter [04-05-06]  
1A-1D. Procedurals
- 1E. Summary Suspension/Notice of Opportunity For Hearing letter [10-24-06]  
1F-1I. Procedurals
2. State Board of Pharmacy Order in re Harold Schwartz, R.Ph. [03-14-94]
3. State Board of Pharmacy Order in re Harold Schwartz, R.Ph. [10-03-94]
4. Statement of Harold Schwartz [03-10-06]
5. Notarized Statement of Christine Kakiou [03-14-06]
6. Notarized Statement of Tiffany Holcomb [03-15-06]
7. Drug Accountability Statement at Giant Eagle for Propoxyphene Napsylate w/APAP 100/650 mg, tablets [07-06-06]
8. Rx #6044765, Rx #6044766 and Rx #6044767 [11-04-05]; Rx #6045032 [11-09-05]
9. Giant Eagle Pharmacy Incident Report [11-09-05]

10. Notarized Statement of Victoria Atkins, R.Ph. [03-24-06]
11. Rx #6048457 [01-13-06]
12. Copy of e-mailed Giant Eagle Pharmacy Incident Report from Manager-4032, RX to Ned Finn [01-20-06]
13. Notarized Statement of Tiffany Holcomb [03-24-06]
14. Rx #6035401 [03-13-05]
15. Giant Eagle Pharmacy Incident Report [03-12-06]
16. Rx #6044062 [10-23-05]
17. Rx #6048041 [01-06-06]
18. Indictment, State of Ohio vs. Harold Schwartz, Case No. CR 06 06 2100, Summit County Common Pleas Court [06-11-06]; Journal Entry [09-29-06]
19. Hearing Stipulations for Harold Schwartz [06-06-07]

Respondent's Exhibits:

- A. Report from Scott M. Bea, Psy.D [05-02-07]
- B1-B7. Drug Screen Reports [11-08-06 to 05-16-07]
- C-E. Three Reports from Scott M. Bea, Psy.D [08-10-06 to 03-27-07]
- F. Memo from Patricia Pfander, Senior Probation Officer [03-26-07]
- G. Affidavit of Renee A. Mills, R.Ph. [06-02-06]
- H. Affidavit of David F. Merk, R.Ph. [06-01-06]
- I. Giant Eagle Loss Prevention and Safety Voluntary Statement of Harold Schwartz [03-10-06]
- J. Hearing Stipulations for Harold Schwartz [06-06-07]

**FINDINGS OF FACT**

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

- (1) Records of the State Board of Pharmacy indicate that Harold Schwartz was originally licensed by the State of Ohio as a pharmacist on August 19, 1963, pursuant to examination and that his license was summarily suspended on October 24, 2006. Records further reflect that Harold Schwartz was previously disciplined by the Board on March 14, 1994.
- (2) Harold Schwartz did, on or about the following dates, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Giant Eagle, beyond the express or implied consent of the owner, to wit: on February 22, 2006, February 24, 2006, and on March 4, 2006, and on various other dates, Harold Schwartz admittedly stole dangerous drugs. Harold Schwartz was observed stealing Darvocet-N 100 mg, and Harold Schwartz admitted to stealing approximately 50 ibuprofen 800 mg and approximately 30 Darvocet-N 100 mg over a three-month time period. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (3) Harold Schwartz did, on or about November 4, 2005, misbrand a drug, to wit: when Harold Schwartz received a prescription for Metrogel 1%, Rx #6044766, he dispensed MetroGel 0.75%, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (4) Harold Schwartz did, on or about January 13, 2006, prior to dispensing Rx #6048457, fail to review the patient profile in order to conduct prospective drug utilization review, to wit: Harold Schwartz failed to review the patient profile for drug-allergy interaction. Specifically, though the computer

indicated an allergy to sulfa, Harold Schwartz failed to recognize it and over-rode the computer flag. Such conduct is in violation of Rule 4729-5-20 of the Ohio Administrative Code.

- (5) Harold Schwartz did, on or about February 10, 2006, misbrand a drug, to wit: when Harold Schwartz received a prescription for verapamil ER 180 mg, Rx #6042399, Harold Schwartz dispensed furosemide 40 mg, which had not been specifically prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (6) Harold Schwartz did, on or about February 14, 2006, misbrand a drug, to wit: when Harold Schwartz received prescriptions for folic acid 1 mg, Rx #6044062, and for fluoxetine 10 mg, Rx #6048041, Harold Schwartz dispensed each drug to the wrong patient (prescription number), which had not been specifically prescribed by the physician. The patients were mother and son. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (7) Harold Schwartz did, on or about numerous occasions in 2005 and 2006, engage in unprofessional conduct in the practice of pharmacy, to wit: Harold Schwartz has been observed while practicing pharmacy to yell, curse, pound his fists on the pharmacy counter, slam down the phone, be short-tempered and rude to both pharmacy staff and patients. Such conduct, indicates that Harold Schwartz is guilty of unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.
- (8) On or about September 26, 2006, Harold Schwartz pled guilty to (3) three counts of Theft of Drugs, felonies of the fourth degree, under Section 2913.02 (A)(1) of the Ohio Revised Code. Harold Schwartz was granted Intervention in Lieu of Conviction. State of Ohio vs. Harold Schwartz, Case No. 06 06 2100, Summit County Common Pleas Court.

#### **CONCLUSIONS OF LAW**

- (1) The State Board of Pharmacy concludes that paragraphs (2) and (8) 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 (2) through (7) 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.

#### **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 Harold Schwartz on October 24, 2006.

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 adjudicates the matter of Harold Schwartz as follows:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends for two years the pharmacist identification card, No. 03-2-08013, held by Harold Schwartz effective as of the date of the mailing of this Order. Further, the Board

suspends the suspension and places Harold Schwartz on probation for five years with the following conditions:

- (1) The State Board of Pharmacy hereby declares that Harold Schwartz'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) Harold Schwartz may not serve as a responsible pharmacist.
  - (3) Harold Schwartz must not violate the drug laws of Ohio, any other state, or the federal government.
  - (4) Harold Schwartz must abide by the rules of the State Board of Pharmacy.
  - (5) Harold Schwartz must comply with the terms of this Order.
  - (6) Harold Schwartz's license is deemed not in good standing until successful completion of the probationary period.
  - (7) 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.
- (B) Harold Schwartz may not work in a pharmacy more than eight hours per day and a maximum of 40 hours per week.
- (C) 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.

Harold Schwartz 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.

Mrs. Gregg seconded the motion and it was approved by the Board: Aye – 6.

3:55 p.m. The Board recessed briefly.

3:58 p.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Lipsyc and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

4: 26 p.m. The Executive Session ended and the meeting was opened to the public.

**R-2007-220** Mrs. Gregg moved that the Board adopt the following order in the matter of **Aaron Craig Link**, R.Ph., 03-1-22513, Chardon, Ohio.

**ORDER OF THE STATE BOARD OF PHARMACY**

Docket Number D-070111-023

*in the matter of:*

**AARON CRAIG LINK, R.PH.**

12180 Quail Woods Drive  
Chardon, Ohio 44024

R.Ph. Number 03-1-22513

**INTRODUCTION**

The matter of Aaron Craig Link came for hearing on June 6, 2007, before the following members of the Board: James E. Turner, R.Ph. (*presiding*); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Aaron Craig Link was represented by Steven B. Ayers. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

**SUMMARY OF EVIDENCE**

State's Witnesses: Frank J. Bodi, Ohio State Board of Pharmacy  
John C. Whittington, D.O., R.Ph.,  
Ohio State Board of Pharmacy

Respondent's Witnesses: Marie Link, R.Ph.  
Aaron Craig Link, R.Ph., Respondent

State's Exhibits:

1. Notice of Opportunity For Hearing letter [01-11-07]  
1A-1C. Procedurals
2. Notarized Statement of Teresa M. Zienka [10-02-06]
3. Notarized Statement of Aaron Link [10-04-06]
4. Notarized Statement of Cathy Whitely, RN [10-05-06]
5. Patient Information Sheet for Marie A. Link [09-29-06]
6. Rx #750695 [09-29-06]
7. Walgreens Patient Prescription Profile for Marie A. Link [10-02-06]

Respondent's Exhibits:

- A. Case Inquiry Report at Walgreens #4317 [10-25-06]
- B. Rx #840683 [10-09-06]
- C1-C5. Five Letters of Recommendation [05-31-07 to 06-04-07]
- D. Decision, Ohio State Board of Pharmacy, Poppe Case No. CA87-08-065, Court of Appeals of Ohio, Twelfth Appellate District, Clermont County [05-31-88]
- E. Decision, The State of Ohio, Appellate, v. Friedman, Appellee, Case No. 91AP-515, Court of Appeals of Ohio, Tenth Appellate District, Franklin County [12-31-91]

**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 Aaron Craig Link was originally licensed by the State of Ohio as a pharmacist on August 13, 1997, pursuant to examination, and is currently licensed to practice pharmacy in Ohio. Records further reflect during the relevant time periods stated herein, Aaron Craig Link was the Responsible Pharmacist at Walgreens #4317, 9400 Mentor Avenue, Mentor 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) Aaron Craig Link did, on or about September 29, 2006, intentionally create a false or forged prescription, to wit: Aaron Craig Link created Rx #750695 for his wife as the patient for 21 tablets of methylprednisolone 4 mg Dosepak, a dangerous drug. Aaron Craig Link did not have permission from an authorized prescriber for the medication. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (3) Aaron Craig Link did, on or about September 29, 2006, sell a dangerous drug when the conduct was not in accordance with Chapters 4729. and 4731. of the Ohio Revised Code, to wit: without a prescription from an authorized prescriber, Aaron Craig Link gave to his wife methylprednisolone 4 mg Dosepak, a dangerous drug. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.

The Board further finds:

This case is not about the medical treatment for bee stings. Rather, it directly concerns Aaron Craig Link's action of creating a prescription and giving a dangerous drug to a patient without authorization from a prescriber. Though much ado was made by Link's wife, his witness at the hearing, about medical treatment using oral steroids for allergic reactions, (about which, contrary to her assertion, this Board believes she was incompetent to make), the testimony is unrefuted that a prescription was required but was not authorized by a physician.

By writing the name of a nurse with whom he was acquainted on the prescription as a prescriber's agent, even though he admittedly knew that said nurse was not the one with whom he was speaking, Link exhibited his knowledge of the falsity of the prescription, and he did so knowing that it would make the document appear to be legitimate even though it clearly was not, and is not, legitimate. Of further importance is the fact that Link, when portraying the phone call to the Board, did not indicate that there was a pause on the phone during the conversation with the nurse who he indicates "authorized" the prescription. This clearly means to any pharmacist that the nurse did not ask permission from any prescriber to issue the appropriate authorization.

Link cites State v Friedman for the proposition that a pharmacist may dispense drugs without a prescription in the bona fide treatment of a patient. The unrefuted testimony in this matter shows this concept inapplicable. As Link himself testified, he used poor judgment. His actions were detrimental to the health and safety of an individual, albeit his own consenting wife. This conduct demands the Board's finding that his conduct is unprofessional as is herein found.

#### **CONCLUSIONS OF LAW**

- (1) The State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings of Fact constitute 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 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 Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

#### **DECISION OF THE BOARD**

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Aaron Craig Link as follows:

- (A) Based on the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby reprimands Aaron Craig Link for his conduct in this matter.
- (B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes on Aaron Craig Link a monetary penalty of one thousand dollars (\$1,000.00) 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, Room 1702, Columbus, Ohio 43215-6126.
- (C) Aaron Craig Link must obtain, within six months from the effective date of this Order, two hours (0.2 CEUs) of Board approved continuing pharmacy education in jurisprudence, which may not also be used for license renewal.

Ms. Pasquale seconded the motion and it was approved by the Board: *Aye* – 5, *Nay* - 4.

After discussion, the Board members suggested that Mr. Turner work with the University of Findley, College of Pharmacy, to make arrangements to hold the Board's April, 2008 meeting on its campus.

Ms. Eastman and Dick Wuest are to work with past Executive Director Frank Wickham and current Executive Director William Winsley to revive the "Past Board Members Club."

Mr. McMillen discussed with the Board the meeting of the Continuing Education Committee (Mrs. Gregg, Mr. Braylock, and Mr. McMillen) with Patti Nussle, R.Ph., JD.

After discussion, Mrs. Gregg moved that the vote on **InstyMed** (Mendota HealthCare, Mendota, Illinois) be tabled until the July, 2007 meeting. Information on the **InstyMed** request will be provided for incoming Board members.

**R-2007-221** Mrs. Gregg moved that the Board minutes of May, 2007 be approved as amended. The motion was seconded by Mrs. Teater and approved by the Board: *Aye* – 8.

**R-2007-222** Mr. Giacalone moved that the Board elect Mr. Braylock to serve as Board President for FY 2008. The motion was seconded by Mr. Lipsyc and approved by the Board: *Aye* – 8.

**R-2007-223** Mr. Giacalone moved that the Board elect Mr. Lipsyc to serve as Vice-President for FY 2008. Mrs. Gregg seconded the motion and approved by the Board: *Aye* – 8.

President Turner administered the Oath of Office to the president-elect, Gregory Braylock.

**OATH OF PRESIDENT**

I, Gregory Braylock, as President of the Ohio Board of Pharmacy, do solemnly swear to uphold the Constitution of the United States and the state of Ohio; to impartially enforce the laws governing the profession of pharmacy and the legal distribution of drugs in the State of Ohio; and carry out the responsibilities of the Board as mandated by the laws of the State of Ohio without bias or prejudice, so help me God.

President Turner then administered the Oath of Office to Vice-President-elect, Nathan S. Lipsyc.

**OATH OF VICE-PRESIDENT**

I, Nathan S. Lipsyc, as Vice-President of the Ohio Board of Pharmacy, do solemnly swear to uphold the Constitution of the United States and the state of Ohio; to impartially enforce the laws governing the profession of pharmacy and the legal distribution of drugs in the State of Ohio; and carry out the responsibilities of the Board as mandated by the laws of the State of Ohio without bias or prejudice, so help me God.

The Board members presented Mr. Turner the "President's Award" in appreciation for his service as President of the Board.

5:24 p.m. Mr. Mitchell moved that the Board go into Executive Session for the purpose of discussing personnel matters pursuant to Section 121.22(G)(1) of the Ohio Revised Code. Mr. Braylock seconded the motion and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

5: 48 p.m. The Executive Session ended and the meeting was opened to the public.

5: 49 p.m. Mrs. Gregg moved that the Board receive Per Diem as follows:

PER DIEM	05/22	06/04	06/05	06/06	Total
Braylock		1	1	1	3
Eastman		1	1	1	3
Giacalone		1	1	1	3
Gregg		1	1	1	3
Lipsyc	1	1	1	1	4
Mitchell	1	1	1	1	4
Pasquale		1	1	1	3
Teater		1	1	1	3
Turner		1	1	1	3

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

5:50 p.m. Mr. Lipsyc moved that the meeting be adjourned. The motion was seconded by Mrs. Gregg and approved by the Board: Aye – 8.

The Ohio State Board of Pharmacy  
approved these Minutes June 10, 2007