

**Minutes of the October 7-9, 2013**  
**Meeting of the Ohio State Board of Pharmacy**

**Monday, October 7, 2013**

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

Also present were Kyle Parker, *Executive Director*; Tracy Nave, *Director of Legal Affairs*; Eric Griffin, *Interim Vice-Executive Director and Compliance Supervisor*; Jennifer Utterdyke, *Director of Internship and Licensing*; Chad Garner, *Information Technology and OARRS Administrator* and Charissa Payer, *Assistant Attorney General*.

Mr. Mitchell and Mr. Parker introduced the topic of the need for a new Nursing Board CPG Committee member volunteer to represent the Ohio Pharmacy Board.

Ms. Huwer stated there was a PAPC Committee meeting in September and the next are scheduled to occur on October 8, 2013 and November 13, 2013.

Ms. Nave provided the Legislative Report.

**10:20 a.m.** The Board discussed various ways to assist veterans. The discussion was tabled with the request for further information.

**10:35 a.m.** Mr. Parker announced the Governor's office press conference related to the updated appearance of OARRS Reports and M.E.D.

Mr. Ernie Boyd of the Ohio Pharmacists' Association (O.P.A.) provided an update on O.P.A. legislative initiatives.

**10:41 a.m.** Ms. Nave introduced the topic of the Board's need for a Rules Review Committee candidates.

Mr. Griffin presented the Compliance Report and introduced Lisa Dietsche, *Compliance Agent* and Mary Dillon, *Investigative Analyst* to the Board.  
Ms. Utterdyke provided the Licensing Report.

**R-2014-030** The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **Troy Stinson**, R.Ph. (03-1-31663) Cincinnati, Ohio, be the responsible person for the following pharmacies:

The Compounding Center, Cincinnati(02-1396600)  
Mullaney's LTC Pharmacy, Cincinnati(02-1620600)

After discussion, Mr. Kolezynski moved that the Board approve the request for a period of 1 year. The motion was seconded by Ms. Huwer and approved by the Board: Aye – 5.

**R-2014-031** The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **Richelle Huffman**, R.Ph. (03-3-28792) Stow, Ohio, be the responsible person for the following pharmacies:

Fitzgerald Pharmacy, Williamsburg (02-0102450)  
Fitzgerald Pharmacy LTC, Williamsburg (02-1967600)

After discussion, Mr. Moné moved that the Board approve the request for a period of 1 year. The motion was seconded by Ms. Yarosh and approved by the Board: Aye – 5.

**R-2014-032** The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **Ron Rahe**, R.Ph. (03-3-14520) Milford, Ohio, be the responsible person for the following pharmacies:

GEM Edwards Pharmacy, Hudson (02-0942250)  
EHS Pharmacy Services, Hudson (02-1143550)

After discussion, Mr. Moné moved that the Board approve the request for a period of 1 year. The motion was seconded by Mr. Cain and approved by the Board: Aye – 5.

**R-2014-033** The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **William Smith**, Pharm.D. (03-3-20174) East Liverpool, Ohio, be the responsible person for the following pharmacies:

East Liverpool Hospital Pharmacy, East Liverpool (02-0630500)  
East Liverpool City Hospital Out-patient Pharmacy, East Liverpool (02-0399350)

After discussion, Mr. Kolezynski moved that the Board approve the request for a period of 1 year. The motion was seconded by Ms. Huwer and approved by the Board: Aye – 5.

**R-2014-034** The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **Andrew Jackson**, R.Ph. (03-1-29737) Batavia, Ohio, be the responsible person for the following pharmacies:

York Drugs, Owensville (02-0179000)  
Jackson's Wellness, Batavia (license pending)

After discussion, Ms. Yarosh moved that the Board approve the request for a period of 3 months. The motion was seconded by Mr. Cain and approved by the Board: Aye – 5.

- R-2014-035** The Board received a request to withdrawal the Pain Management Clinic application of **Dr. Ralph Rohner, Jr.**, (35.027506) West Jefferson, Ohio. Mr. Moné moved that the request to withdrawal the application be accepted. The motion was seconded by Ms. Huwer and approved by the Board: Aye – 5.
- R-2014-036** The Board received a request to withdrawal the Pain Management Clinic application of **Dr. John Vargo**, (34.004553) Youngstown, Ohio. Mr. Kolezynski moved that the request to withdrawal the application be accepted. The motion was seconded by Ms. Yarosh and approved by the Board: Aye – 5.
- R-2014-037** The Board received a request to withdrawal the Pain Management Clinic application of **Ohio Sports & Spine Institute**, (02-1964600) Poland, Ohio. Ms. Huwer moved that the request to withdrawal the application be accepted. The motion was seconded by Mr. Cain and approved by the Board: Aye – 5.
- R-2014-038** The Board received a request to withdrawal the Pain Management Clinic application of **Dr. Bharat J. Shah**, (02-2140900) Fairlawn, Ohio. Ms. Yarosh moved that the request to withdrawal the application be accepted. The motion was seconded by Mr. Cain and approved by the Board: Aye – 5.
- 11:15 a.m.** Mr. Garner introduced Paul Schad, OARRS *Pharmacist* and Andrea Wagner, OARRS *Administrative Assistant* to the Board.
- R-2014-039** Ms. Utterdyke presented a request from pharmacy intern **Michael Oshiro**, (06-0-12246) Dunbar, West Virginia, for permission to approve his internship hours due to extraordinary circumstances pursuant to Rule 4729-3-06 (Statement of Preceptor and Practical Experience Affidavit). After discussion, Ms. Yarosh moved that the Board approve Mr. Oshiro's request. The motion was seconded by Ms. Huwer and approved by the Board: Aye – 5.
- R-2014-040** Ms. Utterdyke presented a request from pharmacy intern **Daniel Mai**, (06-0-1228) Charleston, West Virginia, for permission to approve his internship hours due to extraordinary circumstances pursuant to Rule 4729-3-06 (Statement of Preceptor and Practical Experience Affidavit). After discussion, Ms. Yarosh moved that the Board approve Mr. Mai's request. The motion was seconded by Ms. Huwer and approved by the Board: Aye – 5.
- 11:16 a.m.** The Board recessed briefly.

**11:25 a.m.** The meeting reconvened in room East B.

Mr. Kolezynski moved that the Board go into Executive Session to consider the investigation of charges or complaints against a licensee, confer with Board counsel regarding a pending or imminent court action and to discuss matters required to be confidential by law pursuant to Section 121.22(G)(1), (3) & (5) of the Ohio Revised Code. The motion was seconded by Mr. Cain and a roll-call vote was conducted by President Mitchell as follows: Cain – yes; Huwer – yes; Kolezynski – yes; Moné – yes and Yarosh – yes.

**12:48 p.m.** The Executive Session ended and the meeting was opened to the public.

**R-2014-041** Mr. Mone' moved that the terms of settlement, offered by Royal Palm Specialty Pharmacy (Case Number 2012-1429) (TDDD Number 02-2149350) be accepted by the Board, allowing for sufficient time to prepare a settlement agreement acceptable to all parties. Ms. Huwer seconded the motion and it was approved by the Board Aye – 5.

**12:49 p.m.** The Board recessed for lunch.

**1:58 p.m.** The meeting reconvened in Room East B.

**R-2014-042** Mr. Mitchell announced the following Settlement Agreement has been signed by all parties and is now effective.

**SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY**  
(Case No. 2011-1456)

In the Matter of:

**West Jefferson Urgent Care**

C/O Eric J. Yoon, N.P.

95 E. Main Street

West Jefferson, OH 43162

(Terminal Distributor Number 02-1944100)

This Settlement Agreement is entered into by and between West Jefferson Urgent Care 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.

West Jefferson Urgent Care enters into this Agreement being fully informed of its 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, the right to appeal. West Jefferson Urgent Care acknowledges that by entering into this Agreement it has waived its rights under Chapter 119. of the Revised Code.

WHEREAS, the State Board of Pharmacy is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, refuse to renew any license issued to a terminal distributor of dangerous drugs pursuant to section 4729.54 of the Revised Code, or may impose a monetary penalty on the license holder, for violation of any of the enumerated grounds of Section 4729.57 of the Ohio Revised Code.

WHEREAS, West Jefferson Urgent Care is a licensed terminal distributor of dangerous drugs in the State of Ohio.

WHEREAS, on or about March 29, 2013, pursuant to Chapter 119. of the Ohio Revised Code, West Jefferson Urgent Care was notified of the allegations or charges against it, its right to a hearing, its rights in such hearing, and its right to submit contentions in writing. Except as amended in Paragraph 1 of this Settlement Agreement, the March 29, 2013, Notice of Opportunity for Hearing contains the following allegations or charges:

(1) Records of the Board of Pharmacy indicate that West Jefferson Urgent Care is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs. Records further reflect during the relevant time periods stated herein, the following individuals served as Responsible Person for the license pursuant to Rule 4729-5-11 of the Ohio Administrative Code and Sections 4729.27 and 4729.55 of the Ohio Revised Code: Jornel M. Rivera, D.O., 02/2009-11/2011; Michael M. Alexander, D.O., 11/2011-12/2011; Eric J. Yoon, 12/2011-Present.

(2) West Jefferson Urgent Care did, on or about October 9, 2009, cease to satisfy the qualifications of a terminal distributor, to wit: West Jefferson Urgent Care did not maintain supervision and control of the possession and custody of dangerous drugs acquired by or on behalf of the Urgent Care. Specifically, Eric J. Yoon ordered 100 phendimetrazine SR 105mg capsules, a controlled substance, via Order Number 48792569 from wholesaler Moore Medical, for his own personal use. Such conduct is a violation of Section 2925.23(B)(3) of the Ohio Revised Code, a felony of the fourth degree, and indicates that West Jefferson Urgent Care is within the purview of Section 4729.57 of the Ohio Revised Code.

(3) West Jefferson Urgent Care did, on or about January 5, 2010, cease to satisfy the qualifications of a terminal distributor, to wit: West Jefferson Urgent Care did not maintain supervision and control of the possession and custody of dangerous drugs acquired by or on behalf of the Urgent Care. Specifically, Eric J. Yoon ordered 100 phendimetrazine SR 105mg capsules, a controlled substance, via Order Number 48830435 from wholesaler Moore Medical, for his own personal use. Such conduct is a violation of Section 2925.23(B)(3) of the Ohio Revised Code, a felony of the fourth

degree, and indicates that West Jefferson Urgent Care is within the purview of Section 4729.57 of the Ohio Revised Code.

(4) West Jefferson Urgent Care did, on or about May 27, 2010, cease to satisfy the qualifications of a terminal distributor, to wit: West Jefferson Urgent Care did not maintain supervision and control of the possession and custody of dangerous drugs acquired by or on behalf of the Urgent Care. Specifically, Eric J. Yoon ordered 100 phendimetrazine SR 105mg capsules, a controlled substance, via Order Number 48895690 from wholesaler Moore Medical, for his own personal use. Such conduct is a violation of Section 2925.23(B)(3) of the Ohio Revised Code, a felony of the fourth degree, and indicates that West Jefferson Urgent Care is within the purview of Section 4729.57 of the Ohio Revised Code.

(5) West Jefferson Urgent Care did, on or about June 9, 2011, cease to satisfy the qualifications of a terminal distributor, to wit: West Jefferson Urgent Care did not maintain supervision and control of the possession and custody of dangerous drugs acquired by or on behalf of the Urgent Care. Specifically, Eric J. Yoon ordered 100 phendimetrazine SR 105mg capsules, a controlled substance, via Order Number 4909593 from wholesaler Moore Medical for his own personal use. Such conduct is a violation of Section 2925.23(B)(3) of the Ohio Revised Code, a felony of the fourth degree, and indicates that West Jefferson Urgent Care is within the purview of Section 4729.57 of the Ohio Revised Code.

West Jefferson Urgent Care and Eric J. Yoon neither admit nor deny the allegations stated in the Notice of Opportunity for Hearing letter dated March 29, 2013, as amended herein.

West Jefferson Urgent Care agrees that the charges set forth in the March 29, 2013 Notice of Opportunity for Hearing, if proven at a hearing, would constitute violations of Ohio law.

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

- (A) West Jefferson Urgent Care agrees to appoint a new Responsible Person who qualifies for this position under State and Federal law within 30 days of the effective date of this Agreement.
- (B) Eric Yoon will not serve as Responsible Person for any license held by West Jefferson Urgent Care, or any other location licensed by the Ohio State Board of Pharmacy, at any point in the future.
- (C) West Jefferson Urgent Care agrees to pay a penalty of \$2000.00.

West Jefferson Urgent Care acknowledges that it 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.

West Jefferson Urgent Care waives any and all claims or causes of action it 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. West Jefferson Urgent Care waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

This Agreement embodies the entire agreement between and of the parties. There are no express or implied promises, guarantees, terms, covenants, conditions, or obligations other than those contained herein; and this agreement supersedes all previous communications, representations or agreements, either verbal or written, between the parties.

**R-2014-043**

Mr. Mitchell announced the following Settlement Agreement has been signed by all parties and is now effective.

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

(Docket Number D-121019-269)

In the Matter of:

**JAH Pharmacies, Inc.**  
C/O Jeff Hogrefe, R.Ph.  
1379 Shaker Run Blvd.  
Lebanon, OH 45036

(Terminal Distributor Number 02-2211050)

This Settlement Agreement is entered into by and between JAH Pharmacies, Inc. 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.

JAH Pharmacies, Inc. enters into this Agreement being fully informed of its 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, the right to appeal. JAH Pharmacies, Inc. acknowledges that by entering into this Agreement it has waived its rights under Chapter 119. of the Revised Code.

WHEREAS, the State Board of Pharmacy is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, refuse to renew any license issued to a terminal distributor of dangerous drugs pursuant to section 4729.54 of the Revised Code, or may impose a monetary penalty on the license holder, for violation of any of the enumerated grounds of Section 4729.57 of the Ohio Revised Code.

WHEREAS, JAH Pharmacies, Inc. is a licensed terminal distributor of dangerous drugs in the State of Ohio.

WHEREAS, on or about October 19, 2012, pursuant to Chapter 119. of the Ohio Revised Code, JAH Pharmacies, Inc. was notified of the allegations or charges against it, its right to a hearing, its rights in such hearing, and its right to submit contentions in writing. The October 19, 2012, Summary Suspension/Notice of Opportunity for Hearing contains the following allegations or charges:

(1) Records of the Board of Pharmacy indicate JAH Pharmacies, Inc. is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs. Records further reflect during the relevant time periods, stated herein, Jeff Hogrefe was the Responsible Pharmacist pursuant to Rule 4729-5-11 of the Ohio Administrative Code and Sections 4729.27 and 4279.55 of the Ohio Revised Code.

(2) JAH Pharmacies, Inc. has been inspected three (3) times in the last five (5) months. On each occasion, issues concerning the compounding of pharmaceuticals were uncovered. On or around May 24, 2012, during an initial inspection, a compounding room had been installed in a vacant building. Jeff Hogrefe, R.Ph. was identified as the responsible person for this site and was counseled regarding the full and actual charge requirement for responsible persons. Jeff Hogrefe, R.Ph. was also counseled regarding the proper separation of this compounding pharmacy from an existing Medicine Shoppe where he was already acting as the responsible person. Further, the specialists counseled Jeff Hogrefe, R.Ph. in detail concerning legal manufacturing versus compounding of pharmaceuticals. On or around August 7, 2012, a follow-up inspection was conducted that resulted in approximately twenty-nine (29) written citations, primarily involving the inability to meet minimum standards for compounding parenteral or sterile product prescriptions and the use of outdated drug stock. Jeff Hogrefe, R.Ph. was again given instruction by specialists and required to conform his practice to state and federal law. On October 18, 2012, a third inspection was conducted where many of the issues uncovered in the previous two (2) inspections had not been corrected. Specifically, the sterility standards for compounding pharmaceuticals were not met. Further, illegally manufactured product was present that was not compounded pursuant to a patient specific legitimate prescription. Additionally, outdated drugs were still on hand for use in the compounding process. Thus, this pharmacy continues to not meet minimum standards defined in Ohio Administrative Code 4729-19-04.



JAH Pharmacies, Inc. neither admits nor denies the allegations stated in the Summary Suspension/Notice of Opportunity for Hearing letter dated October 19, 2012; 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, JAH Pharmacies, Inc. knowingly and voluntarily **SURRENDERS PERMANENTLY TO THE STATE BOARD OF PHARMACY JAH PHARMACY, INC.'S TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS LICENSE**, and agrees with the State Board of Pharmacy to the following:

(A) JAH Pharmacies, Inc. agrees to the imposition of a monetary penalty of **One Thousand Dollars (\$1,000.00)** due and owing within 30 days from the effective date of this Agreement. Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed forms to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

(B) JAH Pharmacies, Inc. agrees that this Agreement, as it pertains to Terminal Distributor of Dangerous Drugs License number 02-2211050, shall not impact Jeff Hogrefe, R.Ph.'s other, separately licensed pharmacies.

JAH Pharmacies, Inc. acknowledges that it 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.

JAH Pharmacies, Inc. waives any and all claims or causes of action it 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. JAH Pharmacies, Inc. waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

This Agreement embodies the entire agreement between and of the parties. There are no express or implied promises, guarantees, terms, covenants, conditions, or obligations other than those contained herein; and this agreement supersedes all previous communications, representations or agreements, either verbal or written, between the parties.

**R-2014-044**

Mr. Mitchell announced the following Settlement Agreement has been signed by all parties and is now effective.

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

(Docket Number D-120828-264)

In The Matter Of:

**Wal-Mart Pharmacy #10-2350**  
**C/O Rick Irby, D.Ph., CHC**  
702 S.W. 8<sup>th</sup> Street  
Bentonville, AR 72716  
(TDDD No. 02-0850200)

This Settlement Agreement is entered into by and between Wal-Mart Pharmacy #10-2350 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.

Wal-Mart Pharmacy #10-2350 voluntarily enters into this Agreement being fully informed of its 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. Wal-Mart Pharmacy #10-2350 acknowledges that by entering into this Agreement it has waived its rights under Chapter 119. of the Revised Code.

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

Whereas, Wal-Mart Pharmacy #10-2350 is licensed to practice pharmacy in the State of Ohio.

Whereas, on or about August 28, 2012, pursuant to Chapter 119. of the Ohio Revised Code, Wal-Mart Pharmacy #10-2350 was notified of the allegations or charges against it, its right to a hearing, its rights in such hearing, and its right to submit contentions in writing. Wal-Mart Pharmacy #10-2350 requested a hearing; it was scheduled and continued. The August 28, 2012, Notice of Opportunity for Hearing contains the following allegations or charges:

(1) Records of the Board of Pharmacy indicate that Wal-Mart Pharmacy #10-2350 is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs. Records further reflect during the relevant time periods stated herein, Steve Mantel was the Responsible Pharmacist pursuant to Rule 4729-5-11 of the Ohio Administrative Code and Sections 4729.27 and 4729.55 of the Ohio Revised Code.

(2) Wal-Mart Pharmacy #10-2350 did, on or about July 9, 2011, cease to satisfy the qualifications of a terminal distributor, to wit: adequate safeguards were not in place to assure that Wal-Mart Pharmacy #10-2350 would carry on the business of a terminal distributor of dangerous drugs in a manner that allowed pharmacists and pharmacy interns to practice pharmacy in a safe and effective manner. Specifically, after RX #7060538 was prepared for a patient, it was then dispensed to the incorrect patient who had a similar last name. Thus the patient received Levothyroxine 88 mcg instead of her prescription for Chantix. Pharmacy procedures allowed this situation to occur; such situations being hazardous to patients' health.

Wal-Mart Pharmacy #10-2350 admits to the facts stated in the Notice of Opportunity for Hearing letter dated August 28, 2012, but neither admits nor denies any violation of law; 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, Wal-Mart Pharmacy #10-2350 knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

(A) Wal-Mart Pharmacy #10-2350 agrees to the imposition of a monetary penalty of five hundred dollars (\$500.00) due and owing within 30 days from the effective date of this Agreement. Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed forms to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

If, in the judgment of the Board, Wal-Mart Pharmacy #10-2350 appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to, at any time, institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

Wal-Mart Pharmacy #10-2350 acknowledges that it 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.

Wal-Mart Pharmacy #10-2350 waives any and all claims or causes of action it 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. Wal-Mart Pharmacy #10-2350 waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

**R-2014-045** Mr. Mitchell announced the following Settlement Agreement has been signed by all parties and is now effective.

**SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY**  
(Case Number 2012-1059)

In the Matter of:

**OHIO AMBULANCE**  
**C/O Edward A. Patriarca Sr.**  
26420 Lakeland Boulevard  
Euclid, OH 44132

(Terminal Distributor Number 02-1861950)

This Settlement Agreement is entered into by and between OHIO AMBULANCE 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.

OHIO AMBULANCE enters into this Agreement being fully informed of its 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, the right to appeal. OHIO AMBULANCE acknowledges that by entering into this Agreement it has waived its rights under Chapter 119. of the Revised Code.

WHEREAS, the State Board of Pharmacy is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, refuse to renew any license issued to a terminal distributor of dangerous drugs pursuant to section 4729.54 of the Revised Code, or may impose a monetary penalty on the license holder, for violation of any of the enumerated grounds of Section 4729.57 of the Ohio Revised Code.

WHEREAS, OHIO AMBULANCE is a licensed terminal distributor of dangerous drugs in the State of Ohio.

WHEREAS, on or about January 28, 2013, pursuant to Chapter 119. of the Ohio Revised Code, OHIO AMBULANCE was notified of the allegations or charges against it, its right to a hearing, its rights in such hearing, and its right to submit contentions in writing. The January 28, 2013, Notice of Opportunity for Hearing contains the following allegations or charges:

(1) Records of the Board of Pharmacy indicate that OHIO AMBULANCE is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs.



Records further reflect during the relevant time periods stated herein, Solomon, Arthur G., D.O. was the Responsible Person pursuant to Rule 4729-5-11 of the Ohio Administrative Code and Sections 4729.27 and 4729.55 of the Ohio Revised Code.

(2) OHIO AMBULANCE, between November 2011 and February 3, 2012, failed to secure dangerous drugs in a tamper-evident setting, to wit: the following drugs were left in a desk at a former licensed OHIO AMBULANCE satellite location at 5680 Karl Road, Columbus, Ohio 43229 when the company closed the site:

- 5 midazolam 2mg/2ml vials
- 2 diazepam 10mg/2ml injections
- 11 morphine sulfate 2mg/ml injections
- 1 furosemide 40mg/4ml vial
- 2 Pitressin 1ml vials
- 6 adenosine 6mg/2ml vials

Such conduct is in violation of Rules 4729-33-03(B) and 4729-9-11(B) of the Ohio Administrative Code and constitutes violating a rule of the Board within the meaning of Section 4729.57 of the Ohio Revised Code.

(3) OHIO AMBULANCE, between November 2011 and February 3, 2012, failed to keep complete and accurate records for at least three years of receipt, use, administration, destruction, and waste of dangerous drugs, to wit: the following drugs were left behind when the company closed the site at the former OHIO AMBULANCE satellite location at 5680 Karl Road, Columbus, Ohio 43229:

- 5 midazolam 2mg/2ml vials
- 2 diazepam 10mg/2ml injections
- 11 morphine sulfate 2mg/ml injections
- 1 furosemide 40mg/4ml vial
- 2 Pitressin 1ml vials
- 6 adenosine 6mg/2ml vials

The license holder was unaware that these drugs were missing until a new ambulance company moved into the satellite location. Such conduct is in violation of Rule 4729-33-04 of the Ohio Administrative Code and constitutes violating a rule of the Board within the meaning of Section 4729.57 of the Ohio Revised Code.

(4) OHIO AMBULANCE failed to provide written notice to the Board, by verified facsimile or certified mail, that the former OHIO AMBULANCE satellite location at 5680 Karl Road, Columbus, Ohio 43229 was permanently closed. Such conduct is a violation of Rule 4729-9-07 of the Ohio Administrative code constitutes violating a rule of the Board within the meaning of Section 4729.57 of the Ohio Revised Code.

OHIO AMBULANCE neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated January 28, 2013; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same.

OHIO AMBULANCE admits that the facts alleged in the citation, if proven, would constitute a violation of Ohio Board of Pharmacy regulations.

The Board hereby formally recognizes that Dr. Howard Mell is the new responsible person for OHIO AMBULANCE. Dr. Mell was not employed by and had no authority at OHIO AMBULANCE at the time of the events outlined in the January 28, 2013 Notice of Opportunity for Hearing. Dr. Mell was served with said Notice only in his capacity as the CURRENT responsible person and bears no responsibility for the allegations contained in the Notice.

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

(A) OHIO AMBULANCE agrees to the imposition of a monetary penalty of **Three Thousand, Five Hundred Dollars** (\$3,500.00), one half of which will be due and owing upon the effective date of this Agreement, the other half within 60 days of the effective date of this Agreement. Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed forms to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

OHIO AMBULANCE acknowledges that it 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.

OHIO AMBULANCE waives any and all claims or causes of action it 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. OHIO AMBULANCE waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

This Agreement embodies the entire agreement between and of the parties. There are no express or implied promises, guarantees, terms, covenants, conditions, or obligations other than those contained herein; and this agreement supersedes all previous communications, representations or agreements, either verbal or written, between the parties.

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**2:00 p.m.** The Board was joined by Assistant Attorney General Charissa Payer to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Nicole M. DiSabato**, R.Ph. (03-1-29878) Westerville, Ohio.

**3:02 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 Ms. Huwer and a roll-call vote was conducted by President Mitchell as follows: Cain – yes; Huwer – yes; Kolezynski – yes; Moné – yes; Yarosh – yes.

**3:18 p.m.** The recess ended and the meeting was opened to the public.

**R-2014-046** After votes were taken in public session, the Board adopted the following order in the matter of **Nicole M. DiSabato**, R.Ph. (03-1-29878) Westerville, Ohio.

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

(Case Number 2009-1736)

In The Matter Of:

**NICOLE M. DISABATO, R.Ph.**

1072 Welwyn Drive

Westerville, Ohio 43081

(R.Ph. Number 03-1-29878)

### **INTRODUCTION**

The Matter of Nicole Marie DiSabato came for hearing on October 7, 2013, before the following members of the Board: Kevin J. Mitchell, R.Ph.; (presiding); Edward T. Cain, Public Member; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Michael A. Moné, R.Ph.; and Kilee S. Yarosh, R.Ph.

Nicole Marie DiSabato was represented by Daniel D. Connor. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

### SUMMARY OF EVIDENCE

#### State's Witnesses:

None

#### Respondent's Witnesses:

1. Nicole Marie DiSabato, R.Ph., Respondent
2. Eric Pitt

#### State's Exhibits:

1. Reinstatement hearing request letter [04-10-12]  
1A-1E. Procedurals
2. Order of the State Board of Pharmacy in re Nicole Marie DiSabato, R.Ph. [09-17-10]

#### Respondent's Exhibits:

- A. PRO Pharmacist's Recovery Contract for Nicole Marie DiSabato [10-06-10]
- B. Cornerstone Completion Report [06-12-13]
- C. Jarrod Grossman Report Establishing PRO Compliance [06-09-13]
- D. Ohio State Board of Pharmacy exam results [05-01-13]
- E. Urine Drug Screens [01-01-07 to 09-20-13]; First Lab report explanation [not dated]; Chain of evidence document [10-25-11]
- F. Support group attendance records [04-09-10 through 08-29-13]
- G.-J. Support Group Calendars [2010 through 2013]
- K. Continuing education credits and certificates [10-31-09 to 03-01-13]
- L. Court Order granting intervention In Lieu of Conviction [08-01-10]; and certification of completion and dismissal [10-05-10 to 8-01-13]
- M-P. Letters of Support [06-11-13 to 08-20-13]

### FINDING OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds that Nicole Marie DiSabato has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket Number D-091210-035, Case Number 2009-1736 , effective September 17, 2010.

### DECISION OF THE BOARD

On the basis of the Finding of Fact set forth above, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card, Number 03-1-29878, held by Nicole Marie DiSabato to



practice pharmacy in Ohio subject to a period of probation for five years beginning on the effective date of this Order, with the following conditions:

(A) Nicole Marie DiSabato must enter into a new contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Mental Health and Addiction Services (ODMHAS) approved treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and submit a copy of the signed contract to the Board office before her pharmacist identification card is issued. The contract must provide that:

(1) Random, observed urine drug screens shall be conducted at least once each month for the first year and then at least once every three months for the remaining four years.

(a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.

(b) Results of all drug screens must be negative. Refusal of a urine screen or a diluted urine screen is equivalent to a positive result. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.

(2) The intervener/sponsor shall submit reports to the Board, in a format acceptable to the Board, indicating drug screens and their results in a timely fashion. Actual copies of drug screens shall be made available to the Board upon request.

(3) Attendance is required a minimum of three times per calendar week (Sunday through Saturday), at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.

(4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.

(B) Nicole Marie DiSabato 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 Nicole Marie DiSabato's progress towards recovery and what Nicole Marie DiSabato 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 Nicole Marie DiSabato'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) Nicole Marie DiSabato may not serve as a responsible pharmacist.

(3) Nicole Marie DiSabato may not destroy, assist in, or witness the destruction of controlled substances.

(4) Nicole Marie DiSabato must abide by the contract with her treatment provider and must immediately report any violation of the contract to the Board.

(5) Nicole Marie DiSabato must not violate the drug laws of Ohio, any other state, or the federal government.

(6) Nicole Marie DiSabato must abide by the rules of the State Board of Pharmacy.

(7) Nicole Marie DiSabato must comply with the terms of this Order.

(8) Nicole Marie DiSabato'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.

Nicole Marie DiSabato 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.

Richard Kolezynski moved for Findings of Fact; Michael Moné seconded the motion. Motion passed (Aye-5/Nay-0).

Richard Kolezynski moved for Action of the Board; Margaret Huwer seconded the motion. Motion passed (Aye-5/Nay-0).

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**3:20 p.m.** The Board recessed briefly.

**3:35 p.m.** The meeting reconvened in Room East B.

Ms. Nave and Ms. Payer gave a presentation of Rules on Synthetic Drugs.

**R-2014-047** Mr. Moné moved to table the discussion of Rules on Synthetic Drugs until the Board has more time to review the information presented. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 5.

**4:00 p.m.** Mr. Garner provided an OARRS presentation and led the discussion on same topic.

**4:30 p.m.** Mr. Garner presented the I.T. Report.

Mr. Parker presented a request from **ODADAS** for permission of a Mental Health Pick-Up Station blanket-approval for maintenance medications, beyond the previously approved "mental health drugs only" condition. The Board recommended that these types of Pick-Up Station requests be brought before the Board monthly in order for the Board to determine if a pattern exists. If the Board finds evidence to support the existence of a pattern, then the request for a "blanket-approval" will be reconsidered at that time.

Mr. Parker led a discussion regarding the Medication Treatment Management (MTM) facility, **Ohio Pharmacy Counseling Services**. The Board tabled the discussion for October 9, 2013.

Mr. Parker presented a request from **Berger Health System**, for permission to approve the use of **Cactus Smart Sink** controlled substance disposal system. The Board found no regulation that would prohibit the use of this product.

Mr. Parker led a discussion regarding the yearly Board-provided Continuing Education (CE) quiz and the combined efforts of NABP and the Ohio Pharmacy Board to add non-NABP CE test-providers to the NABP CE List. The Board supported the discontinuation of contracted Board-provided CE quizzes and supported the initiation of Board created and provided electronic CE quizzes.

The Board recessed for the day.

### **Tuesday, October 8, 2013**

**8:30 a.m.** The Ohio State Board of Pharmacy convened in Room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

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

**R-2014-048** Mr. Moné moved that the Board Minutes of August 6, 2013, be approved as amended. Mr. Kolezynski seconded the motion and it was approved by the Board: Aye – 5.

- R-2014-049** Ms. Huwer moved that the list of names for the Rules Review Committee be approved as presented. Ms. Yarosh seconded the motion and it was approved by the Board: Aye – 5.
- 8:50 a.m.** The Board revisited the discussion of various ways to assist military veterans.
- R-2014-050** Mr. Moné moved to table the various ways to assist military veterans discussion until the November 2013 Board Meeting. Ms. Yarosh seconded the motion and it was approved by the Board: Aye – 5.
- 9:07 a.m.** Mr. Moné moved that the Board recess in order to consider a 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 President Mitchell as follows: Cain – yes; Huwer – yes; Kolezynski – yes; Moné – yes and Yarosh – yes.
- 9:40 a.m.** The Executive Session ended and the meeting was opened to the public.
- R-2014-051** Mr. Moné moved that the terms of settlement, offered by Dr. Joseph Daugherty (Case Number 2013-1010) be accepted by the Board, allowing for sufficient time to prepare a settlement agreement acceptable to all parties. Mr. Kolezynski seconded the motion and it was approved by the Board Aye – 5.
- R-2014-052** Mr. Kolezynski moved that the limited license of **Ohio Pharmacy Counseling Services (MTM)** be approved with the additional requirement of quarterly inspections. The licensee may request a review of the additional requirements after 12 months. The motion was seconded by Ms. Huwer and approved by the Board: Aye – 5.
- 10:02 a.m.** Board members affirmed that they have read, understand and have no questions related to the information on the proposed Synthetic Substances Rule. A roll-call vote was conducted by President Mitchell as follows: Cain – yes; Huwer – yes; Kolezynski – yes; Moné – yes and Yarosh – yes.
- R-2014-053** Mr. Moné moved that the proposed Synthetic Substances Rule be affirmed and filed for adoption. The motion was seconded by Ms. Yarosh and approved by the Board: Aye – 5.
- R-2014-054** Mr. Moné moved that Ms. Nave be given the authority to approach the governor for the emergency filing of this rule. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 5.
- The Board discussed Resolution number 2013-193 regarding the application to retake the NAPLEX test of Joshua Ossei-Wusu.



**10:09 a.m.** The Board recessed briefly.

**10:22 a.m.** The meeting reconvened in Room East B.

The Board briefly discussed the upcoming Reciprocity meeting, the Medical Board's Physician Assistant Policy Committee (PAPC) meeting and the NABP District IV meeting.

Mr. Kolezynski moved that the Board go into Executive Session to discuss the employment of a public employee, the purchase of property and matters required to be confidential by law pursuant to Section 121.22(G)(1), (2) & (5) of the Ohio Revised Code. The motion was seconded by Ms. Yarosh and a roll-call vote was conducted by President Mitchell as follows: Cain – yes; Huwer – yes; Kolezynski – yes; Moné – yes and Yarosh – yes.

**11:07 a.m.** The Executive Session ended and the meeting was opened to the public.

Ms. Huwer left the meeting to attend the PAPC meeting.

The Board recessed for lunch.

**1:30 p.m.** In Room South A, 31st Floor of the Vern Riffe Center for Government and the Arts, the following candidates for licensure by reciprocity participated in a discussion of pharmacy laws and rules with Ms. Terri Ghitman, *OARRS Pharmacist*:

Jennalie E. Blackwood	Missouri
Christopher James Booth	West Virginia
Dana Marie Bourassa	North Carolina
Jessica Yvette Brioso	Minnesota
David M. Cole	West Virginia
Cathy Lynn Criste	Pennsylvania
Jeffrey Paul Davis	West Virginia
Megan Michele Diserio	West Virginia
Lucia Fox Dowden	Pennsylvania
Donna J. Eakins	Iowa
Elizabeth Ashley Endicott	Kentucky
Loretta Colburn Foshee	Alabama
Monica Leigh Garbizo	Florida
Reema Rosenn Khalil	Illinois
Ursula Nnenna Onuchukwu	New Jersey
Vatsala Patnam	Arizona
Martin D. Post	Kansas
Sara Reynolds	Michigan
Crystal Dawn Slinker	Texas

Natalie Soltysiak	Pennsylvania
Nimita Varga	Virginia
Shelley Wilson	New York
Ivy Wu	Maryland

**1:45 p.m.** The Board recessed until the next scheduled hearing.

**2:15 p.m.** Ms. Huwer returned from the PAPC meeting.

**2:35 p.m.** The meeting reconvened in Room East B.

**2:43 p.m.** 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. Moné and a roll-call vote was conducted by President Mitchell as follows: Cain – yes; Huwer – yes; Kolezynski – yes; Moné – yes and Yarosh – yes.

**3:30 p.m.** The recess ended and the meeting was opened to the public.

**R-2014-055** Mr. Mone' moved that the terms of settlement, offered by Lisa Ann Baker, R.Ph. (03-2-15516), Bolivar, Ohio (Case Number 2012-1159) be accepted by the Board, allowing for sufficient time to prepare a settlement agreement acceptable to all parties. Ms. Yarosh seconded the motion and it was approved by the Board Aye – 5.

**3:30 p.m.** The Board recessed briefly.

**3:45 p.m.** The meeting reconvened in Room East B.

The Board continued the discussion on various ways to assist veterans.

**3:52 p.m.** The Board recessed for the day.

### **Wednesday, October 9, 2013**

**8:35 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., President; Michael A. Moné, R.Ph., Vice-President; Edward T. Cain, Public Member; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph. and Kilee S. Yarosh, R.Ph.

**R-2014-056** Mr. Kolezynski moved that Board Resolution number 2013-193 be affirmed, and deny the application to retake the NAPLEX test of **Joshua Ossei-Wusu**. The motion was seconded by Mr. Cain and approved by the Board: Aye – 5.

Mr. Parker led a discussion about returning medication to stock.

**8:59 a.m.** The Board recessed briefly.

**9:15 a.m.** The meeting reconvened in Room East B.

The Board was joined by Assistant Attorney General Charissa Payer to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Philip Mark Neiman**, R.Ph. (03-1-11107) Sylvania, Ohio.

**10:45 a.m.** The hearing ended and the record was closed.

Ms. Huwer 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. Yarosh and a roll-call vote was conducted by President Mitchell as follows: Cain – yes; Huwer – yes; Kolezynski – yes; Moné – yes and Yarosh – yes.

**11:00 a.m.** The recess ended and the meeting was opened to the public.

**R-2014-057** After votes were taken in public session, the Board adopted the following order in the matter of **Philip Mark Neiman**, R.Ph. (03-1-11107) Sylvania, Ohio.

**ORDER OF THE STATE BOARD OF PHARMACY**

(Case Number 2011-1386)

In The Matter Of:

**PHILIP MARK NEIMAN, R.Ph.**

8745 Slate Ridge Court

Sylvania, Ohio 43560

(R.Ph. Number 03-1-11107)

**INTRODUCTION**

The Matter of Philip Mark Neiman, R.Ph. came for hearing on October 9, 2013, before the following members of the Board: Kevin J. Mitchell, R.Ph.; (presiding); Edward T. Cain, Public Member; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Michael A. Moné, R.Ph.; and Kilee S. Yarosh, R.Ph.

Philip Mark Neiman, R.Ph. was represented by Daniel D. Connor. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

### SUMMARY OF EVIDENCE

#### State's Witnesses:

None

#### Respondent's Witnesses:

1. Philip Mark Neiman, R.Ph., Respondent
2. Trisha Neiman
3. Jarrod Grossman, R.Ph., PRO

#### State's Exhibits:

1. Reinstatement hearing request letter [01-06-13]  
1A-1B. Procedurals
2. Order of the State Board of Pharmacy in re Philip Mark Neiman, R.Ph. [04-6-12]

#### Respondent's Exhibits:

- A. PRO Pharmacist's Recovery Contract for Philip Mark Neiman [03-29-12]
- B. Letters of compliance [08-25-13 to 09-22-13]
- C. Report from Glenbeigh certifying completion of program [01-04-12]
- D. Urine Drug Screens [09-09-11 to 09-30-13]; First Lab report explanation [not dated];
- E. Support group attendance records [12-22-11 through 10-04-13]
- F. Support Group Calendars [2012 through September 2013]
- G. Continuing education credits and certificates [03-01-12 to 04-21-13]
- H. Lucas County Probation Report – Early Termination of Probation and Drug Test Results [02-20-13 to 04-15-13]
- I. Intervention In Lieu of Conviction documents [07-31-13 to 09-26-13]
- J-L. Letters of Support [01-07-12 to 01-24-12]

### FINDING OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds that Philip Mark Neiman has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket Number D-110914-212, Case Number 2011-1386, effective April 16, 2012.



DECISION OF THE BOARD

On the basis of the Finding of Fact set forth above, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card, Number 03-1-11107, held by Philip Mark Neiman, R.Ph. to practice pharmacy in Ohio subject to a period of probation for ten (10) years beginning on the effective date of this Order, with the following conditions:

(A) Philip Mark Neiman, R.Ph. must enter into a new contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Mental Health and Addiction Services (ODMHAS) 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) Alcohol must be added to the standard urine drug screen. A Breathalyzer may be used to test for alcohol, but an appropriately certified individual must conduct the test within twelve hours of notification.

(c) Results of all drug and alcohol screens must be negative. Refusal of a urine screen or a diluted urine screen is equivalent to a positive result. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.

(2) The intervener/sponsor shall submit reports to the Board, in a format acceptable to the Board, indicating drug screens and their results in a timely fashion. Actual copies of drug screens shall be made available to the Board upon request.

(3) Attendance is required a minimum of three times per calendar week (Sunday through Saturday), at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.

(4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.

(B) Philip Mark Neiman, R.Ph. must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10 of each year of the full ten (10) year probation) that include:

(1) The written report and documentation provided by the treatment program pursuant to the contract, so long as he is under contract with a treatment plan, and

(2) A written description of Philip Mark Neiman's progress towards recovery and what Philip Mark Neiman 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 Philip Mark Neiman'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) Philip Mark Neiman may not serve as a responsible pharmacist.

(3) Philip Mark Neiman may not destroy, assist in, or witness the destruction of controlled substances.

(4) Philip Mark Neiman must abide by the contract with his treatment provider and must immediately report any violation of the contract to the Board.

(5) Philip Mark Neiman must not violate the drug laws of Ohio, any other state, or the federal government.

(6) Philip Mark Neiman must abide by the rules of the State Board of Pharmacy.

(7) Philip Mark Neiman must comply with the terms of this Order.

(8) Philip Mark Neiman'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.

Philip Mark Neiman 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.

Richard Kolezynski moved for Findings of Fact; Kilee Yarosh seconded the motion. Motion passed (Aye-5/Nay-0).

Kilee Yarosh moved for Action of the Board; Margaret Huwer seconded the motion. Motion passed (Aye-5/Nay-0).

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**11:02 a.m.** The Board recessed briefly.

**11:15 a.m.** The meeting reconvened in Room East B.

Absolute Pharmacy gave a presentation about pharmacy technicians filling auto-dispensing machines and regulations therein.

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

**12:33 p.m.** The meeting reconvened in Room East B.

Mr. Kolezynski moved that the Board go into Executive Session to consider the investigation of charges or complaints against a licensee, confer with Board counsel regarding a pending or imminent court action and to discuss matters required to be confidential by law pursuant to Section 121.22(G)(1), (3) & (5) of the Ohio Revised Code. The motion was seconded by Ms. Yarosh and a roll-call vote was conducted by President Mitchell as follows: Cain – yes; Huwer – yes; Kolezynski – yes; Moné – yes and Yarosh – yes.

**1:40 p.m.** The Executive Session ended and the meeting was opened to the public.

The Board discussed the upcoming Roundtable.

The Board discussed the presentation given by Absolute Pharmacy.

**R-2014-058** Mr. Moné moved that the Board receive Per Diem as follows:

PER DIEM	9/10	9/23	10/7	10/8	10/9	Total
Cain	0	0	1	1	1	3
Huwer	1	1	1	1	1	5
Kolezynski	0	0	1	1	1	3
Mitchell	0	1	1	1	1	4
Moné	0	0	1	1	1	3
Yarosh	0	1	1	1	1	4

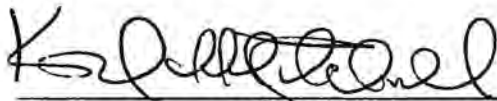
Mr. Kolezynski seconded the motion and it was approved by the Board: Aye – 5.

**R-2014-059** Mr. Moné moved that the 2013 Staff Recognition Resolutions be memorialized in the Minutes. Mr. Cain seconded the motion and it was approved by the Board: Aye – 5.

**R-2014-060** Mr. Moné moved that the license renewal of **Laurie Thompson Palmer R.Ph.** (03-3-14361) Bexley, Ohio, be denied. Mr. Cain seconded the motion and it was approved by the Board: Aye – 5.

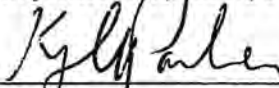
**R-2014-061** Mr. Moné moved that the Board summarily suspend the license to practice pharmacy belonging to **Joseph Merrill, R.Ph.** (03-2-30581) Canal Winchester, Ohio. Mr. Kolezynski seconded the motion and it was approved by the Board: Aye - 4/Nay – 0/Abstain - 1. Ms. Huwer abstained from the vote.

**R-2014-062** Mr. Kolezynski moved that the meeting be adjourned. The motion was seconded by Ms. Yarosh and approved by the Board:  
Aye – 5.



Kevin J. Mitchell, R.Ph., President

Date: 5 Nov 13



Kyle W. Parker, M.B.A., R.Ph., Executive Director

Date: 5 Nov 13