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Minutes Of The Meeting
Ohio State Board of Pharmacy
Columbus, Ohio
October 4, 5, 6, 1999

MONDAY, OCTOBER 4, 1999

1:10 p.m. ROLL CALL

The State Board of Pharmacy convened in Room 1948, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Robert B. Cavendish, R.Ph. (President); Diane C. Adelman, R.Ph. (Vice-President); Ann D. Abele, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Lawrence J. Kost, R.Ph.; Amonte B. Littlejohn, R.Ph.; and Nicholas R. Repke, Public Member.

Also present were William T. Winsley, Executive Director; Timothy Benedict, Assistant Executive Director; David Rowland, Legal Affairs Administrator; Sally Ann Steuk, Assistant Attorney General; and William McMillen, Licensing Administrator.

Mr. Winsley announced that certificates were mailed to all pharmacists who retired in the past year.

RES. 2000-054 Mr. Winsley announced that the following Settlement Agreement in the matter of David M. Sunshein, R.Ph. (03-2-15284) had been signed by all parties and would be effective as of the date of the Board President's signature:

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-981208-024)

In The Matter Of:

DAVID MICHAEL SUNSHEIN, R.Ph.
566 East Dorothy Lane
Kettering, OH 45419
(R.Ph. No. 03-2-15284)

This Settlement Agreement is entered into by and between David Michael Sunshein 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.

David Michael Sunshein 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.

David Michael Sunshein is knowingly and voluntarily acknowledging that, in order to settle the disciplinary charges that have been filed by the Board against him and in order to obviate the need to conduct an administrative hearing to consider possible disciplinary sanctions against David Michael Sunshein'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:

- (A) 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.
- (B) David Michael Sunshein neither admits nor denies the allegations stated in the Notice; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same:
 - (1) Records of the Board of Pharmacy indicate that David Michael Sunshein was originally licensed in the state of Ohio on August 10, 1983, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
 - (2) David Michael Sunshein is addicted to liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy; to wit: David Michael Sunshein admitted to Board agents that he is addicted to hydrocodone with APAP. David Michael Sunshein stated that after having two surgeries on his back, he became dependent on hydrocodone, ingesting thirty to fifty tablets per day. Further, David Michael Sunshein has admitted to abusing Ultram on a regular basis in an amount approximating thirty per week. David Michael Sunshein obtained these dangerous drugs by stealing them from four different pharmacies where he was employed; and, David Michael Sunshein created telephone prescriptions to cover for the theft of drugs. Such conduct indicates that David Michael Sunshein falls within the ambit of Sections 3719.121(A); 3719.121(B); and, 4729.16(A)(3) of the Ohio Revised Code.
 - (3) David Michael Sunshein did, on or about June 23, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole sixty-four unit doses of Ultram 50mg, in violation of Section 2913.02 of the Ohio Revised Code.
 - (4) David Michael Sunshein did, on or about August 4, 1997, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole forty unit doses of Propoxyphene N-100, a schedule IV controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.
 - (5) David Michael Sunshein did, on or about August 12, 1997, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole twelve unit doses of Hydrocodone Bitartrate 5mg/Acetaminophen 500mg, a schedule III controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.
 - (6) David Michael Sunshein did, on or about November 5, 1997, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole twenty-two unit doses of Propoxyphene N-100, a schedule IV controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.
 - (7) David Michael Sunshein did, on or about November 10, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the prop-

erty of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole eight unit doses of Ultram 50mg, in violation of Section 2913.02 of the Ohio Revised Code.

- (8) David Michael Sunshein did, on or about December 1, 1997, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole one Duragesic patch, a schedule II controlled substance, and six unit doses of MS Contin, also a schedule II controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.
- (9) David Michael Sunshein did, on or about January 22, 1998, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole five unit doses of Ultram 50mg, in violation of Section 2913.02 of the Ohio Revised Code.
- (10) David Michael Sunshein did, on or about February 27, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole forty unit doses of Oxycontin 20mg and forty unit doses of Oxycodone with APAP, schedule II controlled substances, in violation of Section 2913.02 of the Ohio Revised Code.
- (11) David Michael Sunshein did, on or about March 9, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances and/or dangerous drugs, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole forty unit doses of Oxycontin 20mg, a schedule II controlled substance, and sixty-six unit doses of Ultram 50mg, a dangerous drug, in violation of Section 2913.02 of the Ohio Revised Code.
- (12) David Michael Sunshein did, on or about May 27, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances and/or dangerous drugs, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole thirty-eight doses of Propoxyphene, a schedule IV controlled substance; nine unit doses Oxycontin 20mg, a schedule II controlled substance; twenty-five unit doses of Lortab, a schedule III controlled substance; four unit doses of Ty-Tab #3, a schedule III controlled substance; and forty-two unit doses of Ultram 50mg, a dangerous drug, in violation of Section 2913.02 of the Ohio Revised Code.
- (13) David Michael Sunshein did, on or about June 15, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole twenty-eight Oxycodone with APAP, a schedule II controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.
- (14) David Michael Sunshein did, on or about August 13, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole fourteen unit doses of Diazepam 10mg, a schedule IV controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.
- (15) David Michael Sunshein did, on or about October 6, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole

seven unit doses of Ty-Tab #3, a schedule III controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.

- (16) David Michael Sunshein did, on or about October 20, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of the Montgomery County Coroner's Office/Crime Lab, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole four unit doses of Propoxyphene N-100, a schedule IV controlled substance, in violation of Section 2913.02 of the Ohio Revised Code.
- (17) David Michael Sunshein did, on or about June 23, 1997, through October 20, 1998, while employed as a public official, commit a theft offense, as defined in division (K) of Section 2913.01 of the Revised Code, when the property was owned by the state or any political subdivision thereof, to-wit: while working as a pharmacist with the Montgomery County Coroner's Office/Crime Lab, David Michael Sunshein stole drugs accompanying deceased persons as they were admitted to the Coroner's Office. The following items were stolen by David Michael Sunshein while employed as a public official:

<u>Date</u>	<u>Quantity</u>	<u>Drug</u>
06/23/97	64	Ultram 50mg
08/04/97	40	Propoxyphene N-100
08/12/97	12	Hydrocodone 5/500
11/05/97	22	Propoxyphene N-100
11/10/97	8	Ultram 50mg
12/01/97	1	Duragesic Patch
12/01/97	6	MS Contin
01/22/98	5	Ultram 50mg
02/27/98	40	Oxycontin 20mg
02/27/98	40	Ultram 50mg
03/09/98	4	Oxycontin 20mg
03/09/98	66	Ultram 50mg
05/27/98	38	Propoxyphene N-100
05/27/98	9	Oxycontin 20mg
05/27/98	41	Ultram 50mg
05/27/98	25	Lortab
05/27/98	4	Ty-Tab #3
06/15/98	28	Oxycodone APAP
08/13/98	14	Diazepam 10mg
10/06/98	7	Ty-Tab #3
10/20/98	4	Propoxyphene N-100

Such conduct is in violation of Section 2921.41 of the Ohio Revised Code.

- (18) David Michael Sunshein did, from May 28, 1997, through November 29, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of his employer, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole the following controlled substances from Cub Pharmacy in Trotwood, Ohio:

<u>Quantity</u>	<u>Drug</u>
112	Hydrocodone Bitartrate 7.5mg/APAP 500mg
70	Hydrocodone Bitartrate 10mg/APAP 500mg
95	Hydrocodone Bitartrate 7.5mg/APAP 650mg
358	Hydrocodone Bitartrate 10mg/APAP 650mg
438	Hydrocodone Bitartrate 7.5mg/APAP 750mg

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

- (19) David Michael Sunshein did, on or about May 28, 1997, to November 29, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of his employer, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole the following controlled substances from Cub Pharmacy in Huber Heights, Ohio:

<u>Quantity</u>	<u>Drug</u>
667	Hydrocodone Bitartrate 7.5mg/APAP 500mg
332	Hydrocodone Bitartrate 10mg/APAP 500mg
118	Hydrocodone Bitartrate 7.5mg/APAP 650mg
312	Hydrocodone Bitartrate 10mg/APAP 650mg
131	Hydrocodone Bitartrate 7.5mg/APAP 750mg

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

- (20) David Michael Sunshein did, on or about May 28, 1997, through November 29, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of his employer, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole the following controlled substances from Cub Pharmacy in Centerville, Ohio:

<u>Quantity</u>	<u>Drug</u>
1,644	Hydrocodone Bitartrate 7.5mg/APAP 500mg
131	Hydrocodone Bitartrate 7.5mg/APAP 650mg
266	Hydrocodone Bitartrate 10mg/APAP 650mg
1,142	Hydrocodone Bitartrate 7.5mg/APAP 750mg

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

- (21) David Michael Sunshein did, on or about May 28, 1997, through November 29, 1998, with purpose to deprive, knowingly obtain or exert control over controlled substances, the property of HIS employer, beyond the express or implied consent of the owner, to-wit: David Michael Sunshein stole the following controlled substances from Cub Pharmacy in Miamisburg, Ohio:

<u>Quantity</u>	<u>Drug</u>
67	Hydrocodone Bitartrate 7.5mg/APAP 500mg
141	Hydrocodone Bitartrate 7.5mg/APAP 650mg
191	Hydrocodone Bitartrate 10mg/APAP 650mg
1,630	Hydrocodone Bitartrate 7.5mg/APAP 750mg
1,426	Hydrocodone Bitartrate 5mg/APAP 500mg

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

- (22) David Michael Sunshein did, on or about April 24, 1997, through February 22, 1998, knowingly make false statements in a prescription, order, report, or record required by Chapter 3719. or 4729. of the Revised Code, to-wit: on five separate occasions, David Michael Sunshein created false prescriptions in the name of Michael Spurlock in order to cover for his theft of drugs from Cub Pharmacy in Huber Heights, Ohio:

<u>Date</u>	<u>Rx No.</u>	<u>Qty.</u>	<u>Drug</u>
04/24/97	4121358	50	Hydrocodone Bitartrate 10mg/APAP 650mg
05/11/97	4121508	60	Hydrocodone Bitartrate 10mg/APAP 650mg
07/20/97	4122027	60	Hydrocodone Bitartrate 10mg/APAP 650mg
09/30/97	4122548	40	Hydrocodone Bitartrate 10mg/APAP 500mg
02/22/98	4123564	60	Hydrocodone Bitartrate 7.5mg/APAP 500mg

Such conduct is in violation of Section 2925.23 of the Ohio Revised.

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

- (A) The removal of the Summary Suspension Order issued December 8, 1998, pursuant to Section 3719.121(B) of the Ohio Revised Code.
- (B) The indefinite suspension of his pharmacist identification card, No. 03-2-15284.
 - (1) Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, David Michael Sunshein may not be employed by or work in a facility licensed

by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.

- (2) 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.
 - (3) David M. Sunshein is hereby advised that if reinstatement is not achieved prior to three years from the effective date of this Agreement he must take and successfully complete the "NAPLEX" examination or its board-approved equivalent.
 - (4) David M. Sunshein must comply with the requirements for renewal of a pharmacist identification card pursuant to Rule 4729-7-02 of the Ohio Administrative Code.
- (C) One year after the effective date of this Agreement, or thereafter, the Board will consider any petition filed by David M. Sunshein for a hearing, pursuant to Revised Code Chapter 119. of the Ohio Revised Code, upon the question of the reinstatement of his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
- (1) David M. Sunshein must enter into a contract with a limited treatment provider acceptable to the Board for a period of not less than five years from the effective date of this Agreement and, upon signing, submit a copy of the contract to the Board office. The contract must provide:
 - (a) Random, observed urine drug screens shall be conducted at least every three months.
 - (i) 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.
 - (ii) Results of urine screens must be negative. 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 and probation.
 - (b) The intervener/sponsor shall provide copies of all urine screens to the Ohio Board of Pharmacy in a timely fashion.
 - (c) Regular attendance, a minimum of three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting is required.
 - (d) The program shall immediately report to the Ohio Board of Pharmacy any violations of the contract and/or lack of cooperation.

If, in the judgment of the Board, David Michael Sunshein 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, revoke probation, modify the conditions of probation, and reduce or extend the period of probation, and/or the Board may 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.

David Michael Sunshein 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.

David Michael Sunshein 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. David Michael Sunshein waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

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

This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the date of the Board President's signature below.

<u>/s/ David Michael Sunshein</u> David Michael Sunshein, Respondent	<u>/d/ 9-23-99</u> Date of Signature
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<u>/s/ Eric J Plinke</u> Eric J. Plinke, Attorney for Respondent	<u>/d/ 9/28/99</u> Date of Signature
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<u>/s/ Robert B Cavendish</u> Robert B. Cavendish, President, Ohio State Board of Pharmacy	<u>/d/ 10/4/99</u> Date of Signature
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<u>/s/ Sally Ann Steuk</u> Sally Ann Steuk, Ohio Assistant Attorney General	<u>/d/ 10-4-99</u> Date of Signature
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1:20 p.m.

Ms. Abele moved that the Board go into Executive Session for the purpose of conferring with the Assistant Attorney General regarding pending and imminent court matters pursuant to Section 121.22(G)(3) of the Revised Code, and for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Revised Code. The motion was seconded by Mrs. Adelman and a roll call vote was conducted by President Cavendish as follows: Abele-Yes, Adelman-Yes, Eastman-Yes, Giacalone-Yes, Kost-Yes, Littlejohn-Yes, and Repke-Yes.

3:15 p.m.

RES. 2000-055 The Board came out of Executive Session and the meeting was opened to the public. Mr. Littlejohn moved that the Board summarily suspend the license of Thomas William Foti, R.Ph. (03-1-10877) pursuant to Section 3719.121 of the Revised Code due to the fact that there is clear and convincing evidence that continuation of his professional practice or method of personally furnishing controlled substances presents a danger of immediate and serious harm to others. The motion was seconded by Ms. Eastman and was approved by the Board (Aye-7/Nay-0).

RES. 2000-056 Mr. Littlejohn then moved that the Board approve the settlement offer in the matter of CVS/pharmacy #3484 and CVS/pharmacy #6149 with the addition of a \$1,000 fine in each case. The motion was seconded by Ms. Abele and approved by the Board (Aye-6/Nay-1). The settlement is to be published in the Minutes after being signed by all parties.

RES. 2000-057 Ms. Eastman moved that the Board grant the request for a continuance of the hearing scheduled for James S. Patton, R.Ph. (03-3-22165). The motion was seconded by Mrs. Adelman and approved by the Board (Aye-7/Nay-0).

RES. 2000-058 Mrs. Adelman then moved that the Board grant the request for a continuance of the hearing scheduled for Larry Devonne Shaffer, Jr., R.Ph. (03-2-17555). The motion was seconded by Ms. Eastman and approved by the Board (Aye-7/Nay-0).

RES. 2000-059 Mr. Winsley then requested the Board's approval to sign the Letters of Agreement for the NAPLEX and the MPJE examinations with the National Association of Boards of Pharmacy (NABP) for the next year. Ms. Abele moved that the Board approve the continuation of these testing agreements with NABP and that the Letters of Agreement be signed. The motion was seconded by Ms. Eastman and approved by the Board (Aye-7/Nay-0).

3:47 p.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Bruce A. Wachsman, R.Ph., Germantown, Tennessee.

4:00 p.m.

The hearing ended and the record was closed. Ms. Abele moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against licensees and registrants pursuant to Section 121.22(G)(1) of the Revised Code. Mrs. Adelman seconded the motion. President Cavendish then conducted the following roll call vote: Abele-Yes, Adelman-Yes, Eastman-Yes, Giacalone-Yes, Kost-Yes, Littlejohn-Yes, and Repke-Yes.

4:10 p.m.

RES. 2000-060 The Executive Session ended and the meeting was opened to the public. Ms. Abele moved that the Board adopt the following Order in the matter of Bruce A. Wachsman, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-990817-014)

In The Matter Of:

BRUCE A. WACHSMAN, R.Ph.
2295 Wickersham Cove
Germantown, Tennessee 38139
(R.Ph. No. 03-1-12436)

INTRODUCTION

THE MATTER OF BRUCE A. WACHSMAN, R.Ph. CAME TO BE CONSIDERED ON OCTOBER 4, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

BRUCE A. WACHSMAN WAS NOT PRESENT, NOR WAS HE REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Timothy J. Benedict, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice Of Opportunity For Hearing letter dated August 17, 1999, with attached postal return receipt signed by Bruce A. Wachsman on August 20, 1999.
- (2) Exhibit 1A--Copy of Pharmacist File Front Sheet of Bruce A. Wachsman showing original date of registration as August 10, 1977, and two-page copy of Renewal Application for Pharmacist License, No. 03-1-12436, for a license to practice pharmacy in

Ohio from September 15, 1998, to September 15, 1999, of Bruce A. Wachsman dated July 19, 1998.

- (3) Exhibit 2--Copy of three-page Consent Order before the Tennessee Board of Pharmacy in the matter of Bruce Wachsman dated May 8, 1996.

Respondent's Exhibits:

- (1) None

FINDINGS 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 the following to be fact:

- (1) On August 17, 1999, Bruce A. Wachsman was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing.
- (2) As demonstrated by return receipt of August 20, 1999, Bruce A. Wachsman received the letter of August 17, 1999, informing him of the allegations against him, and his rights.
- (3) Bruce A. Wachsman has not responded in any manner to the letter of August 17, 1999, and has not requested a hearing in this matter.
- (4) Records of the Ohio State Board of Pharmacy indicate that Bruce A. Wachsman was originally licensed in the state of Ohio on August 10, 1977, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (5) Bruce A. Wachsman is addicted to liquor and/or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: On May 7, 1996, a Consent Order was issued by the Tennessee Board of Pharmacy which was signed by Bruce A. Wachsman as Respondent and by his attorney. The Consent Order read, in pertinent part:

"WHEREAS, Respondent acknowledges that he has become addicted to the use of alcohol, narcotics or other drugs and has been under medical care and treatment for chemical dependency problems;"

* * *

"The Respondent shall completely abstain from the consumption of (alcohol and) controlled substances ..."

CONCLUSION OF LAW

Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Bruce A. Wachsman:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-1-12436, held by Bruce A. Wachsman and such suspension is effective as of the date of the mailing of this Order.
 - (1) Bruce A. Wachsman, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.

(2) Bruce A. Wachsman, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return the identification card and license to the offices of the State Board of Pharmacy within ten days after receipt of this Order. The identification card and wall certificate should be forwarded by certified mail, return receipt requested.

(B) The Board will consider any petition filed by Bruce A. Wachsman for a hearing, pursuant to Ohio Revised Code Chapter 119., upon the question of reinstatement of his Ohio pharmacist license and, at the discretion of the Board, Bruce A. Wachsman shall personally appear before the Board.

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

MOTION CARRIED.

SO ORDERED.

4:16 p.m. The motion was seconded by Mr. Repke and approved by the Board (Aye-7/Nay-0).

The meeting was recessed until Tuesday, October 5, 1999.

TUESDAY, OCTOBER 5, 1999

8:15 a.m. ROLL CALL

The State Board of Pharmacy convened in Room 1948, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Robert B. Cavendish, R.Ph. (President); Diane C. Adelman, R.Ph. (Vice-President); Ann D. Abele, R.Ph.; Robert P. Giacalone, R.Ph.; Lawrence J. Kost, R.Ph.; Amonte B. Littlejohn, R.Ph.; Suzanne L. Neuber, R.Ph, and Nicholas R. Repke, Public Member.

RES. 2000-061 The Board was joined by Mr. Ernest Boyd, R.Ph. and Alon Apel of the Ohio Pharmacists Association (OPA) and by Robert Parsons, R.Ph. of the Ohio Society of Health-System Pharmacists (OSHP) for a discussion of pending legislation. Senate Bill 172 and House Bill 241 were discussed in detail by these individuals with the Board. In addition, the Board agreed to send a letter to OPA indicating the Board's opinion that administration of medications by pharmacists was not currently prohibited by Ohio law and also indicating the Board's support of the inclusion of medication administration in the definition of the practice of pharmacy as found in Section 4729.01 of the Revised Code.

9:25 a.m.

The Board took a brief recess.

10:00 a.m.

The meeting resumed. The Board continued the review of the Internal Management Rules and the recommendations of the Ad Hoc Committee on Rule Review for new and revised Administrative Code rules that had begun at the September Board meeting. The Board also discussed enacting and/or amending rules to address the prescription format for hospice outpatient starter kits. All these rules will be voted on at the November, 1999 meeting.

Next, the Board discussed the plans for the District IV NABP/AACP meeting to be held in Toledo, Ohio on November 5-7, 1999. The Ohio Board of Pharmacy will be the host Board for this meeting and all members were encouraged to attend and participate.

Mrs. Neuber, Ms. Abele, and Mr. Winsley reported on the NABP Executive Officers Conference, held September 26-29, 1999 in Washington, D.C. that they had attended as representatives of the Board of Pharmacy.

Mr. McMillen then joined the Board to discuss the proposed Emergency Medical Service (EMS) rules that had been developed by the Ad Hoc Committee on EMS rules. These rules will also be voted on at the November, 1999 meeting.

11:56 a.m.

The Board recessed for lunch.

1:00 p.m.

RES. 2000-062 All of the Board members, with the exception of Ms. Eastman, reconvened in Room 1948 for the purpose of meeting with the candidates for licensure by reciprocity. Following presentations by Board members and self-introductions by the candidates for licensure by reciprocity, Mrs. Adelman moved that the Board approve the following candidates for licensure. The motion was seconded by Mr. Repke and approved by the Board (Aye-7/Nay-0).

DAILEY, RYAN MICHAEL	GEORGIA
DAWSON, MONT	KENTUCKY
DODD, PHILLIP BRENDAN	TEXAS
DUSING, MICHELLE LYNN	KENTUCKY
ENTERKIN, KEITH BRADFORD	GEORGIA
ERAIKHUEMEN, NATHANIEL EBHOTA	MISSOURI
KNEZOVICH, JO ANNA	PENNSYLVANIA
LE, TRINH THI	NORTH CAROLINA
MCCORMICK, CONNIE ANN	VIRGINIA
NICHOLSON, SUSAN LYNN	WEST VIRGINIA
PETRUSKA, NICHOLAS PAUL	PENNSYLVANIA
ROUX, RYAN KEENAN	TEXAS
SCHOOLES, LEWIS MICHAEL	WEST VIRGINIA
SHOEMAKER, EDWARD FRANK	PENNSYLVANIA
SUMMERS, TIMOTHY M.	ILLINOIS
SWEENEY, HEATHER ANN	KENTUCKY
TURCOVSKY, THOMAS F.	PENNSYLVANIA
ZEHNER, JOHN ANDREW	INDIANA

1:30 p.m.

The Board resumed the business meeting. Ms. Eastman arrived and joined the meeting.

1:51 p.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Gary A. Gerst, Lisle, Illinois.

4:12 p.m.

The hearing ended and the record was closed. The Board took a brief recess.

4:25 p.m.

Ms. Abele moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against licensees and registrants and to consider personnel matters pursuant to Section 121.22(G)(1) of the Revised Code. Ms. Eastman seconded the motion. President Cavendish then conducted the following roll call vote: Abele-Yes, Adelman-Yes, Eastman-Yes, Giacalone-Yes, Kost-Yes, Littlejohn-Yes, Neuber-Yes, and Repke-Yes.

5:00 p.m.

RES. 2000-063 The Executive Session ended and the Board meeting resumed in Public Session. Mrs. Neuber moved that the Board adopt the following Order in the matter of Gary A. Gerst:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-990629-052)

In The Matter Of:

GARY ANDREW GERST
5452 Burr Oak Road
Lisle, Illinois 60532
(D.O.B. 4/25/63)

INTRODUCTION

THE MATTER OF GARY ANDREW GERST CAME TO HEARING ON OCTOBER 5, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

GARY ANDREW GERST WAS REPRESENTED BY MICHAEL J. GOLDBERG, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Frank Bodi, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Gary Andrew Gerst, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1—Copy of three-page Proposal To Deny/Notice Of Opportunity For A Hearing letter dated June 29, 1999.
- (2) Exhibit 1A—Application For Examination As A Pharmacist with attached Statement of Gary Gerst and copy of Journal Entry "Order To Seal Records" in the matter of State of Ohio vs. Gary Gerst, Case No. CR-303551, Cuyahoga County Court of Common Pleas, dated November 15, 1996.
- (3) Exhibit 1B—Hearing Request letter dated July 12, 1999.
- (4) Exhibit 1C—Copy of Hearing Schedule letter dated July 20, 1999.
- (5) Exhibit 1D—Copy of eight-page Order of the State Board of Pharmacy, Docket No. D-940125-039 dated October 31, 1994.
- (6) Exhibit 1E—Copy of Pharmacist File Front Sheet of Gary Gerst showing original date of registration as March 6, 1987.
- (7) Exhibit 1F—Copy of Notice of Appearance of Michael J. Goldberg dated September 17, 1999.

Respondent's Exhibits:

- (1) Exhibit A—Copy of letter from Mitchell S. Swieca dated September 25, 1999.
- (2) Exhibit B—Copy of memorandum from M. Mitrovic dated November 19, 1998.
- (3) Exhibit C—Copy of Certificate of Completion of Addiction Orientation for Health Care Providers Course for the dates November 16-19, 1998.
- (4) Exhibit D—Copy of letter from Robert P. Reid dated September 30, 1999.
- (5) Exhibit E—Copy of letter from Lyndi Locke Wheatley dated October 1, 1999.
- (6) Exhibit F—Copy of letter from George Muhvic dated October 4, 1999.
- (7) Exhibit G—Copy of diploma from Midwestern University of Gary Andrew Gerst for the degree of Bachelor of Medical Science in Physician Assistant Studies dated May 29, 1999.
- (8) Exhibit H—Copy of two-page Midwestern University transcript of Gary A. Gerst covering from Summer Quarter 1997 to Spring Quarter 1999 dated May 24, 1999.
- (9) Exhibit I—Copy of letter from Meredith Davison dated June 15, 1999.
- (10) Exhibit J1—Copy of a two-page Student Evaluation Form for Gary Gerst dated April 29, 1999.
- (11) Exhibit J2—Copy of a two-page Student Evaluation Form for Gary Gerst dated May 25, 1999.
- (12) Exhibit J3—Copy of a two-page Student Evaluation Form for Gary Gerst dated February 24, 1999.
- (13) Exhibit J4—Copy of a two-page Student Evaluation Form for Gary Gerst dated October 22, 1998.

- (14) Exhibit J5—Copy of a two-page Student Evaluation Form for Gary Gerst dated April 1, 1999.
- (15) Exhibit J6—Copy of a two-page Student Evaluation Form for Gary Gerst dated December 24, 1998.
- (16) Exhibit J7—Copy of a two-page Student Evaluation Form for Gary Gerst dated July 29, 1998.
- (17) Exhibit J8—Copy of a two-page Student Evaluation Form for Gary Gerst dated August 26, 1998.
- (18) Exhibit J9—Copy of a two –page Student Evaluation Form for Gary Gerst dated January 27, 1999.
- (19) Exhibit J10—Copy of a two-page Student Evaluation Form for Gary Gerst dated November 17, 1998.
- (20) Exhibit K—Copy of Journal Entry "Order To Seal Records" in the matter of State of Ohio vs. Gary Gerst, Case No. CR-303551, Cuyahoga County Court of Common Pleas, dated November 15, 1996.

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 Ohio State Board of Pharmacy indicate that Gary Andrew Gerst submitted an Application For Examination As A Pharmacist on or about June 9, 1999.
- (2) Records further indicate that Gary Andrew Gerst was originally licensed to practice pharmacy as a pharmacist in the state of Ohio on March 6, 1987, and on October 31, 1994, his identification card, No. 03-2-16769, was revoked.
- (3) This action of the Board was based upon a criminal conviction and/or the underlying facts upon which a criminal conviction was based. Such conduct indicates that Gary Andrew Gerst does not qualify for licensure as a pharmacist pursuant to Section 4729.08(B) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes having been disciplined by the Ohio State Board of Pharmacy pursuant to Section 4729.16 of the Revised Code as provided in paragraph (E) of Rule 4729-5-04 of the Ohio Administrative Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes 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) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (3) 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 Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.08 of the Ohio Revised Code and Rule 4729-5-04 of the Ohio Administrative Code, and on the basis of the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby denies the issuance of a certificate of registration or an identification card to practice pharmacy and, therefore, denies the Application for Examination as a Pharmacist submitted by Gary Andrew Gerst. Further, Gary Andrew Gerst may not submit an Application for Examination as a Pharmacist prior to twenty years from the date of this order.

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

MOTION CARRIED.

SO ORDERED.

5:05 p.m. The motion was seconded by Mr. Repke and approved by the Board (Aye-8/Nay-0).
The Board meeting recessed until Wednesday, October 6, 1999.

WEDNESDAY, OCTOBER 6, 1999

8:33 a.m. ROLL CALL

The State Board of Pharmacy convened in Room 1948, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Robert B. Cavendish, R.Ph. (President); Diane C. Adelman, R.Ph. (Vice-President);
Ann D. Abele, R.Ph.; Robert P. Giacalone, R.Ph.; Lawrence J. Kost, R.Ph.;
Suzanne L. Neuber, R.Ph.; and Nicholas R. Repke, Public Member.

Mr. Winsley reported on the pharmacist examination statistics and report that would be discussed with the Ohio Pharmacy School Deans at the meeting later in the day. The Board members reviewed the report which required no further action by the Board.

Ms. Abele reported on the meeting of the Nurse Practitioner Formulary Committee and Mr. Benedict reported on his attendance at the Medical Board's Prescribing Committee meeting.

Ms. Abele moved that the Board approve the Minutes of the September 7, 8, 9, 1999 meeting as amended. The motion was seconded by Mrs. Neuber and approved by the Board (Aye-6/Nay-0).

8:50 a.m.

RES. 2000-064 Mr. Benedict presented a request for a waiver pursuant to Ohio Administrative Code Rule 4729-5-11. Following discussion, Mrs. Neuber moved that the Board grant a one year approval of the request of George Brown, R.Ph. to serve as the responsible pharmacist at the following sites:

Samaritan Hospital; Ashland (02-0030000)
Peoples Hospital; Mansfield (02-1012750)

The motion was seconded by Mr. Giacalone and approved (Aye-6/Nay-0/Abstain-1[Abele]). Ms. Abele abstained from the discussion and the vote on this issue.

8:53 a.m.

Mr. Littlejohn joined the meeting.

9:06 a.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Medicine Shoppe #1018, Lancaster, Ohio.

9:55 a.m.

The hearing ended and the record was closed. The Board took a brief recess.

10:17 a.m.

Mr. Repke moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against a licensee pursuant to Section 121.22(G)(1) of the Revised Code. Ms. Neuber seconded the motion. President Cavendish then conducted the following roll call vote: Abele-Yes, Adelman-Yes, Giacalone-Yes, Kost-Yes, Littlejohn-Yes, Neuber-Yes, and Repke-Yes.

10:45 a.m.

RES. 2000-065 The Executive Session ended and the meeting was opened to the public. Ms. Abele moved that the Board adopt the following Order in the matter of Medicine Shoppe #1018, Lancaster, Ohio:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-990722-007)

In The Matter Of:

MEDICINE SHOPPE #1018
c/o Pamela Jo McCandlish, R.Ph.
900 East Main Street
Lancaster, Ohio 43130
(Terminal Distributor No. 02-0936300)

INTRODUCTION

THE MATTER OF MEDICINE SHOPPE #1018 CAME TO HEARING ON OCTOBER 6, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

MEDICINE SHOPPE #1018 WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Christopher Reed, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Ronald W. Henderson, R.Ph., Owner, Medicine Shoppe #1018
(2) Pamela Jo McCandlish, R.Ph., Responsible Pharmacist, Medicine Shoppe #1018

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter dated July 22, 1999.
(2) Exhibit 1A--Hearing Request letter dated July 27, 1999.
(3) Exhibit 1B--Copy of Hearing Schedule letter dated August 3, 1999.
(4) Exhibit 1C--Copy of Renewal Application for DDD License No. 02-0936300, for a Terminal Distributor of Dangerous Drugs License from January 1, 1999, to December 31, 1999, of Medicine Shoppe #1018 signed by Pamela J. McCandlish and dated October 6, 1998.
(5) Exhibit 2--Copy of Dangerous Drug Distributor Inspection Report of Medicine Shoppe #1018 dated May 6, 1996.
(6) Exhibit 3--Report of Medicine Shoppe #1018 for prescriptions purchased from January 1, 1999, through February 6, 1999, for Christopher Reed.
(7) Exhibit 4--Prescription number N726504.
(8) Exhibit 5--The Medicine Shoppe Patient Counseling Log dated January 21, and January 22, beginning with prescription number 722882 and ending with prescription number 716063.
(9) Exhibit 6--Copy of The Medicine Shoppe Patient Advisory Leaflet and two duplicate receipts for prescription number N726504 dated January 21, 1999.

- (10) Exhibit 8--The Medicine Shoppe Patient Counseling Log dated January 28, and January 29, beginning with prescription number 726973 and ending with prescription number 72587.
- (11) Exhibit 9--Copy of The Medicine Shoppe Patient Advisory Leaflet for prescription number 726504 dated January 28, 1999.

Respondent's Exhibits:

- (1) Exhibit A--Medicine Shoppe Counseling Policy, not dated.
- (2) Exhibits B1 and B2--Copy of two-page chart of The Medicine Shoppe Comparisons for Location 1018, 1999 Results.
- (3) Exhibit C--Letter from Mrs. Helen Lemert dated July 28, 1999.
- (4) Exhibit D--Letter from Vickie L. Vaughn dated July 28, 1999.
- (5) Exhibit E--Letter from Mary Neighbor dated August 1, 1999.
- (6) Exhibit F--Letter from Marcia Hemsorth-Rempel dated August 6, 1999.
- (7) Exhibit G--Letter from Rick Lyendecker dated August 2, 1999.
- (8) Exhibits H1 through H4--Four-page handwritten letter from "Patti" (Patricia A. Stuart) dated September 1, 1999.
- (9) Exhibit I--Certificate to return to work of Pamela McCandlish dated January 20, 1999.

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 Pamela Jo McCandlish is the Responsible Pharmacist at Medicine Shoppe #1018 pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) Medicine Shoppe #1018 did, on or about January 21, 1999, fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing medications to a patient pursuant to prescription number 726504, and others, Medicine Shoppe pharmacists failed to review the original prescription and/or refill information for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Pamela Jo McCandlish and/or her designee failed to offer patient counseling and failed to maintain records of such. The failure to follow the "DUR" and "Patient Counseling" rules occurred after Medicine Shoppe #1018 had been previously given written warning for a similar violation on May 6, 1996. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.
- (3) Medicine Shoppe #1018 did, on or about January 28, 1999, fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing medications to a patient pursuant to prescription number 726504, and others, Medicine Shoppe pharmacists failed to review the original prescription and/or refill information for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Pamela Jo McCandlish and/or her designee failed to offer patient counseling and failed to maintain records of such. The failure to follow the "DUR" and "Patient Counseling" rules occurred after Medicine Shoppe #1018 had been previously given written warning for a similar violation on May 6, 1996. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.
- (4) Medicine Shoppe #1018, on or about February 6, 1999, was not equipped with a library containing current federal and state laws, regulations, and rules governing the legal distribution of drugs in Ohio, to wit: the pharmacy's law book had not been updated since January of 1993. Medicine Shoppe #1018 had been previously given written warning about this deficiency on May 6, 1996. Such conduct violates Rule 4729-9-02 of the Ohio Administrative Code, and allows Medicine Shoppe #1018 to fail to meet the minimum qualifications of a terminal distributor of dangerous drugs as set forth in Section 4729.55(A) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (4) of the Findings of Fact constitute violating rules of the Board as provided in Division (A)(2) of Section 4729.57 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (4) of the Findings of Fact constitutes ceasing to satisfy the qualifications of a terminal distributor of dangerous drugs set forth in Section 4729.55 of the Revised Code as provided in Division (A)(7) of Section 4729.57 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.57 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Medicine Shoppe #1018:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes 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, 17th Floor, Columbus, Ohio 43266-0320.
- (B) The Board will stay the monetary penalty imposed in paragraph (A) above provided that Pamela Jo McCandlish provides evidence within six months of the effective date of this Order of successful participation in three hours (0.3 CEUs) of continuing pharmacy education pertaining to patient counseling and must inform the Board of this choice within thirty days of the effective date of this Order.

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Littlejohn and approved (Aye-7/Nay-0).

11:00 a.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Joseph John Zika, Jr., R.Ph., Bronston, Kentucky.

11:15 a.m.

Ms. Eastman joined the meeting and began to participate in the hearing.

12:12 p.m.

The hearing ended and the record was closed. Ms. Abele moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against a licensee pursuant to Section 121.22(G)(1) of the Revised Code. Mr. Repke seconded the motion. President Cavendish then conducted the following roll call vote: Abele-Yes, Adelman-Yes, Eastman-Yes, Giacalone-Yes, Kost-Yes, Littlejohn-Yes, Neuber-Yes, and Repke-Yes.

12:40 p.m.

RES. 2000-066

The Executive Session ended and the meeting was opened to the public. Mr. Repke moved that the Board adopt the following Order in the matter of Joseph John Zika, Jr., R.Ph., Bronston, Kentucky:

ORDER OF THE STATE BOARD OF PHARMACY
(Dockets No. D-990519-049 and D-990908-019)

In The Matter Of:

JOSEPH JOHN ZIKA, JR., R.Ph.
P. O. Box 456
Bronston, Kentucky 42518
(R.Ph. No. 03-1-10192)

INTRODUCTION

THE MATTER OF JOSEPH JOHN ZIKA, JR. CAME TO HEARING ON OCTOBER 6, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JOSEPH JOHN ZIKA, JR. WAS NOT PRESENT, NOR WAS HE REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Mike Cluxton, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1—Copy of nine-page Notice of Opportunity for Hearing dated May 19, 1999, with attached Personal Delivery Record signed and dated July 9, 1999.
- (2) Exhibit 1A—Copy of three-page Summary Suspension Order/Notice of Opportunity For Hearing dated September 8, 1999.
- (3) Exhibit 1B—Hearing Request letter dated August 5, 1999.
- (4) Exhibit 1C—Copy of Hearing Schedule letter dated August 10, 1999, with attached Personal Delivery Record signed and dated August 13, 1999.
- (5) Exhibit 1D—Copy of Pharmacist File Front Sheet of Joseph John Zika, Jr. showing original date of registration as July 20, 1972, and two-page copy of Renewal Application For Pharmacist License, No. 03-1-10192, dated July 25, 1998.
- (6) Exhibit 2—Copy of letter from Rick Cagle dated March 9, 1998.
- (7) Exhibit 2A—Copy of four-page Statement of Debbie Lange dated June 8, 1998.
- (8) Exhibit 3—Copy of Medical Expenses Report of Mary Lou Zika for the period October 27, 1995 through January 30, 1998.
- (9) Exhibit 3A—Seven pages of copies of documents for Mary Zika as follows: Prescription Order No. 6616774-0991 with Prescription Tag dated November 30, 1997; Prescription Order No. 6610244-0991 with Prescription Tag dated March 22, 1997; Prescription Order No. 6610245-0991 with Prescription Tag dated March 22, 1997; Prescription Order No. 66100983-0991 with Prescription Tag dated April 23, 1997; Prescription Order No. 6616725-0991 with Prescription Tag dated November 28, 1997; Handwritten Prescription Order with Prescription Tag No. 6618638-0991 dated January 30, 1998; Handwritten Prescription Order with Prescription Tag No. 6618637-0991 dated January 30, 1998.
- (10) Exhibit 4—Two-page Statement Form of Timothy H. Brown, M.D. dated August 10, 1998.
- (11) Exhibit 5—Four-page Statement of Joseph J. Zika dated February 4, 1999.
- (12) Exhibit 6—Copy of Promissory Note of Joe Zika dated February 9, 1998.

- (13) Exhibit 7—Two pages of copies of documents for Mary Lou Zika as follows: Handwritten Prescription Order with Prescription Tag No. 4401659-0991 dated January 25, 1997; Handwritten Prescription Order with Prescription Tag No. 4403863-0991 dated January 30, 1998.
- (14) Exhibit 8—Medical Expenses Report of Joseph J. Zika, Jr. for the period September 22, 1996, through November 2, 1997.
- (15) Exhibit 9—Statement of Edward B. Herzig, M.D. dated July 28, 1998.
- (16) Exhibit 10—Copy of letter from Edward B. Herzig, M.D. dated February 6, 1998.
- (17) Exhibit 11—Two pages of copies of documents for Joseph Zika as follows: Prescription Order No. 6610979-0991 with Prescription Tag dated April 23, 1997; Handwritten Prescription Order with Prescription Tag No. 6606187-0991 dated September 22, 1996.
- (18) Exhibit 12—Copy of Medical Expenses Report for the period September 27, 1996, through January 30, 1998, for patient DOB August 19, 1965.
- (19) Exhibit 13—Copy of Prescription Order No. 4402013-0991 with Prescription Tag dated July 3, 1997; Prescription Order No. 4401848-0991 with Prescription Tag dated March 13, 1997.
- (20) Exhibit 14—Copy of Statement of William Polanka, M.D. dated August 31, 1998.
- (21) Exhibit 15—Two-page copy of Medical Expenses Report for the period August 16, 1996, through January 30, 1998, for patient DOB December 23, 1923.
- (22) Exhibit 16—Copy of Prescription Order No. 4403047-0991 with Prescription Tag dated October 4, 1997.
- (23) Exhibit 17—Copy of Statement of William Polanka, M.D. dated August 31, 1998.
- (24) Exhibit 18—Two pages of copies of documents for Mary Lou Zika as follows: Handwritten Prescription Order with Prescription Tag No. 6611567-0991 dated May 13, 1997; Handwritten Prescription Order with Prescription Tag No. 4402259-0991 dated May 13, 1997.
- (25) Exhibit 19—Statement of O. Daniel Fox dated July 28, 1998.
- (26) Exhibit 20—Certified copy of "Waiver of Indictment" in the matter of State of Ohio vs. Joseph J. Zika, Jr., Case No. CR99-05-0654, Butler County Common Pleas Court, dated July 9, 1999.
- (27) Exhibit 21—Certified copy of "Waiver of Right of Prosecution By Indictment, and Request for Filing of Information" in the matter of State of Ohio vs. Joseph J. Zika, Jr., Case No. CR99-05-0654, Butler County Common Pleas Court, dated July 9, 1999.
- (28) Exhibit 22—Certified copy of "Jury Waiver" in the matter of State of Ohio vs. Joseph J. Zika, Jr., Case No. CR99-05-0654, Butler County Common Pleas Court, dated July 9, 1999.
- (29) Exhibit 23—Certified copy of two-page "Information For: Theft of Drugs" in the matter of State of Ohio vs. Joseph J. Zika, Jr., Case No. CR99-05-0654, Butler County Common Pleas Court, dated July 9, 1999.
- (30) Exhibit 24—Certified copy of "Entry of Plea of Guilty To An Information" in the matter of State of Ohio vs. Joseph J. Zika, Jr., Case No. CR99-05-0654, Butler County Common Pleas Court, dated July 9, 1999.
- (31) Exhibit 25—Certified copy of two-page "Judgment of Conviction Entry" in the matter of State of Ohio vs. Joseph J. Zika, Jr., Case No. CR99-05-0654, Butler County Common Pleas Court, dated August 17, 1999.

Respondent's Exhibits:

- (1) None

FINDINGS 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 the following to be fact:

- (1) Records of the Ohio State Board of Pharmacy indicate that Joseph John Zika, Jr. was originally licensed to practice pharmacy in the state of Ohio on July 20, 1972, pursuant to examination. On September 8, 1999, Joseph John Zika, Jr.'s license was summarily suspended in accordance with Section 3719.121(C) of the Ohio Revised Code.
- (2) Joseph John Zika, Jr. did, from on or about September 22, 1996, to January 30, 1998, knowingly make a false statement in a prescription, order, report, or record required by Chapter 3719. or 4729. of the Ohio Revised Code, to wit: Joseph John

Zika, Jr. created prescriptions for dangerous drugs for Mary Zika listing Dr. Timothy Brown as the prescribing physician, and illegally charged his insurance company for the following dangerous drugs:

<u>Date Filled</u>	<u>Rx Number</u>	<u>Drug/Strength</u>	<u>Quantity</u>	<u>Listed Physician</u>
09/22/96	6606181	Seldane-D 60mg	60 tabs	Dr. Brown
11/25/96	6604291	Biaxin 500mg	20 tabs	Dr. Brown
12/26/96	6608171	Flumadine 100mg	20 tabs	Dr. Brown
01/16/97	6606700	Allegra 60mg	60 caps	Dr. Brown
01/25/97	6608902	Diflucan 150mg	1 tab	Dr. Brown
03/22/97	6610244	Augmentin 500mg	20 tabs	Dr. Brown
03/22/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
03/27/97	6606700	Allegra 60mg	60 caps	Dr. Brown
04/23/97	6610983	Allegra 60mg	60 caps	Dr. Brown
05/31/97	6610983	Allegra 60mg	60 caps	Dr. Brown
06/27/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
07/03/97	6610983	Allegra 60mg	60 caps	Dr. Brown
08/23/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
08/23/97	6614065	Augmentin 500mg	20 tabs	Dr. Brown
09/02/97	6610983	Allegra 60mg	60 caps	Dr. Brown
10/04/97	6610983	Allegra 60mg	60 caps	Dr. Brown
11/02/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
11/02/97	6610983	Allegra 60mg	60 caps	Dr. Brown
11/28/97	6616725	Diflucan100mg	7 tabs	Dr. Brown
11/30/97	6610983	Allegra 60mg	60 caps	Dr. Brown
11/30/97	6616774	Augmentin 500mg	20 tabs	Dr. Brown
12/11/97	6616725	Diflucan 100mg	7 tabs	Dr. Brown
01/10/98	6610983	Allegra 60mg	60 caps	Dr. Brown
01/30/98	6618638	Augmentin 500mg	20 tabs	Dr. Brown
01/30/98	6618637	Entex	30 tabs	Dr. Brown

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

- (3) Joseph John Zika, Jr. did, from on or about September 22, 1996, to January 30, 1998, sell at retail, dangerous drugs, to wit: Joseph John Zika, Jr. sold the following dangerous drugs to Mary Zika:

<u>Date Filled</u>	<u>Rx Number</u>	<u>Drug/Strength</u>	<u>Quantity</u>	<u>Listed Physician</u>
09/22/96	6606181	Seldane-D 60mg	60 tabs	Dr. Brown
11/25/96	6604291	Biaxin 500mg	20 tabs	Dr. Brown
12/26/96	6608171	Flumadine 100mg	20 tabs	Dr. Brown
01/16/97	6606700	Allegra 60mg	60 caps	Dr. Brown
01/25/97	6608902	Diflucan 150mg	1 tab	Dr. Brown
03/22/97	6610244	Augmentin 500mg	20 tabs	Dr. Brown
03/22/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
03/27/97	6606700	Allegra 60mg	60 caps	Dr. Brown
04/23/97	6610983	Allegra 60mg	60 caps	Dr. Brown
05/31/97	6610983	Allegra 60mg	60 caps	Dr. Brown
06/27/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
07/03/97	6610983	Allegra 60mg	60 caps	Dr. Brown
08/23/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
08/23/97	6614065	Augmentin 500mg	20 tabs	Dr. Brown
09/02/97	6610983	Allegra 60mg	60 caps	Dr. Brown
10/04/97	6610983	Allegra 60mg	60 caps	Dr. Brown
11/02/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
11/02/97	6610983	Allegra 60mg	60 caps	Dr. Brown
11/28/97	6616725	Diflucan100mg	7 tabs	Dr. Brown
11/30/97	6610983	Allegra 60mg	60 caps	Dr. Brown
11/30/97	6616774	Augmentin 500mg	20 tabs	Dr. Brown
12/11/97	6616725	Diflucan 100mg	7 tabs	Dr. Brown
01/10/98	6610983	Allegra 60mg	60 caps	Dr. Brown
01/30/98	6618638	Augmentin 500mg	20 tabs	Dr. Brown
01/30/98	6618637	Entex	30 tabs	Dr. Brown

Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.

- (4) Joseph John Zika, Jr. did, from January 25, 1997, to January 30, 1998, intentionally make, utter, or sell, or knowingly possess a false or forged prescription, to wit: John Joseph Zika, Jr. created prescription number 4401659 dated January 25, 1997, and prescription number 4401954 dated March 22, 1997, for Robitussin A-C Syrup, a Schedule V controlled substance. He later created prescription number 4403863 dated January 30, 1998, for Tylenol with Codeine #3, a Schedule III controlled substance listing Dr. Timothy Brown as the prescribing physician for Mary Zika. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (5) Joseph John Zika, Jr. did, on or about January 25, 1997, and January 30, 1998, knowingly sell or offer to sell a controlled substance, to wit: Joseph John Zika, Jr. sold the following controlled substances to Mary Zika:

<u>Date Filled</u>	<u>Rx Number</u>	<u>Drug/Strength</u>	<u>Quantity</u>	<u>Listed Physician</u>
01/25/97	4401659	Robitussin A-C Syrup	180ml	Dr. Brown
03/22/97	4401954	Robitussin A-C Syrup	120ml	Dr. Brown
01/30/98	4403863	Tylenol w/Codeine #3	20 tabs	Dr. Brown

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

- (6) Joseph John Zika, Jr. did, from September 22, 1996, to November 2, 1997, knowingly make a false statement in a prescription, order, report, or record required by Chapter 3719. or 4729. of the Ohio Revised Code, to wit: Joseph John Zika, Jr. created the following prescriptions for dangerous drugs for Joseph Zika listing Dr. Edward B. Herzig as the prescribing physician:

<u>Date Filled</u>	<u>Rx Number</u>	<u>Drug/Strength</u>	<u>Quantity</u>	<u>Listed Physician</u>
09/22/96	6606187	Beconase AQ 0.042%	25 spr	Dr. Herzig
04/23/97	6610979	Beconase AQ 0.042%	25 spr	Dr. Herzig
06/01/97	6610979	Beconase AQ 0.042%	25 spr	Dr. Herzig
08/07/97	6610979	Beconase AQ 0.042%	25 spr	Dr. Herzig
11/02/97	6610979	Beconase AQ 0.042%	25 spr	Dr. Herzig

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

- (7) Joseph John Zika, Jr. did, from November 6, 1996, to October 4, 1997, intentionally make, utter, or sell, or knowingly possess a false or forged prescription, to wit: Joseph John Zika, Jr. created the following prescriptions for Valium 10mg, a Schedule IV controlled substance, for Tisha L. Appleby, listing Dr. William Polanka as the prescribing physician:

<u>Date Filled</u>	<u>Rx Number</u>	<u>Drug/Strength</u>	<u>Quantity</u>	<u>Listed Physician</u>
11/06/96	4402712	Valium 10mg	120 tabs	Dr. Polanka
07/03/97	4402013	Valium 10mg	120 tabs	Dr. Polanka
09/02/97	4402712	Valium 10mg	120 tabs	Dr. Polanka
10/04/97	4402712	Valium 10mg	120 tabs	Dr. Polanka

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

- (8) Joseph John Zika, Jr. did, from November 6, 1996, to October 4, 1997, knowingly sell or offer to sell a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Ohio Revised Code, to wit: Joseph John Zika, Jr. sold 480 units of Valium 10mg, a Schedule IV controlled substance, to Tisha L. Appleby. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (9) Joseph John Zika, Jr. did, on or about November 6, 1996, and again on October 4, 1997, intentionally make, utter, or sell, or knowingly possess a false or forged prescription, to wit: Joseph John Zika, Jr. created prescription number 4401221 dated November 6, 1996, and prescription number 4403047 dated October 4,

1997, for Valium 10mg, a Schedule IV controlled substance, for Mildred Broughton, listing Dr. William Polanka as the prescribing physician. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

- (10) Joseph John Zika, Jr. did, on November 6, 1996, and again on October 4, 1997, knowingly sell a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Ohio Revised Code, to wit: Joseph John Zika, Jr. sold 180 tablets of Valium 10mg, a Schedule IV controlled substance under prescription numbers 4403047 and 4401221 in quantities of 90 tablets each to Mildred Broughton. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (11) Joseph John Zika, Jr. did, from on or about May 13, 1997, to November 2, 1997, knowingly make a false statement in a prescription, order, report, or record required by Chapter 3719. or 4729. of the Ohio Revised Code, to wit: Joseph John Zika, Jr. created prescriptions for Mary Zika listing the prescribing physician as Dr. O. Daniel Fox, for the following dangerous drugs:

<u>Date Filled</u>	<u>Rx Number</u>	<u>Drug/Strength</u>	<u>Quantity</u>	<u>Listed Physician</u>
05/13/97	4402259	Vicodin 500/5mg	30 tabs	Dr. Fox
05/13/97	66114567	Skelaxin 400mg	30 tabs	Dr. Fox
05/31/97	4402259	Vicodin 500/5mg	30 tabs	Dr. Fox
09/02/97	4402259	Vicodin 500/5mg	30 tabs	Dr. Fox
11/02/97	4402259	Vicodin 500/5mg	30 tabs	Dr. Fox

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

- (12) Joseph John Zika, Jr. did, from January 25, 1997, to January 30, 1998, intentionally make, utter, or sell, or knowingly possess a false or forged prescription, to wit: Joseph John Zika, Jr. created the following prescriptions for Mary Zika:

<u>Date Filled</u>	<u>Rx Number</u>	<u>Drug/Strength</u>	<u>Quantity</u>	<u>Listed Physician</u>
09/22/96	6606181	Seldane-D 60mg	60 tabs	Dr. Brown
11/25/96	6604291	Biaxin 500mg	20 tabs	Dr. Brown
12/26/96	6608171	Flumadine 100mg	20 tabs	Dr. Brown
01/16/97	6606700	Allegra 60mg	60 caps	Dr. Brown
01/25/97	4401659	Robitussin A-C Syrup	180 ml	Dr. Brown
01/25/97	6608902	Diflucan 150mg	1 tab	Dr. Brown
03/22/97	6610244	Augmentin 500mg	20 tabs	Dr. Brown
03/22/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
03/22/97	4401954	Robitussin A-C Syrup	120 ml	Dr. Brown
03/27/97	6606700	Allegra 60mg	60 caps	Dr. Brown
04/23/97	6610983	Allegra 60mg	60 caps	Dr. Brown
05/13/97	4402259	Vicodin 500 5mg	30 tabs	Dr. Fox
05/13/97	6611567	Skelaxin 400mg	30 tabs	Dr. Fox
05/31/97	4402259	Vicodin 500 5mg	30 tabs	Dr. Fox
05/31/97	6610983	Allegra 60mg	60 caps	Dr. Brown
06/27/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
07/03/97	6610983	Allegra 60mg	60 caps	Dr. Brown
08/23/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
08/23/97	6614065	Augmentin 500mg	20 tabs	Dr. Brown
09/02/97	6610983	Allegra 60mg	60 caps	Dr. Brown
09/02/97	4402259	Vicodin 500 5mg	30 tabs	Dr. Fox
10/04/97	6610983	Allegra 60mg	60 caps	Dr. Brown
11/02/97	4402259	Vicodin 500 5mg	30 tabs	Dr. Fox
11/02/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
11/02/97	6610983	Allegra 60mg	60 caps	Dr. Brown
11/28/97	6616725	Diflucan100mg	7 tabs	Dr. Brown
11/30/97	6610983	Allegra 60mg	60 caps	Dr. Brown
11/30/97	6616774	Augmentin 500mg	20 tabs	Dr. Brown
12/11/97	6616725	Diflucan 100mg	7 tabs	Dr. Brown
01/10/98	6610983	Allegra 60mg	60 caps	Dr. Brown
01/30/98	4403863	Tylenol w/Codeine #3	20 tabs	Dr. Brown

01/30/98	6618638	Augmentin 500mg	20 tabs	Dr. Brown
01/30/98	6618637	Entex	30 tabs	Dr. Brown

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

- (13) Joseph John Zika, Jr. did, on or about September 22, 1996, through January 30, 1998, with purpose to deprive the owner of property or services and without the consent of the owner or person authorized to give consent, knowingly obtain or exerted control over either the property or services of another by deception, to wit: Joseph John Zika, Jr. stole the following dangerous drugs and controlled substances valued in excess of \$1,789.38 for himself, his wife, and other family members on numerous occasions:

<u>Date Filled</u>	<u>Rx Number</u>	<u>Drug/Strength</u>	<u>Quantity</u>	<u>Listed Physician</u>
09/22/96	6606181	Seldane-D 60mg	60 tabs	Dr. Brown
09/22/96	6606187	Beconase AQ 0.042%	25 spr	Dr. Herzig
11/06/96	4401221	Valium 10mg	90 tabs	Dr. Polanka
11/06/96	4402712	Valium 10mg	120 tabs	Dr. Polanka
11/25/96	6604291	Biaxin 500mg	20 tabs	Dr. Brown
12/26/96	6608171	Flumadine 100mg	20 tabs	Dr. Brown
01/16/97	6606700	Allegra 60mg	60 caps	Dr. Brown
01/25/97	4401659	Robitussin A-C Syrup	180 ml	Dr. Brown
01/25/97	6608902	Diflucan 150mg	1 tab	Dr. Brown
03/22/97	6610244	Augmentin 500mg	20 tabs	Dr. Brown
03/22/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
03/22/97	4401954	Robitussin A-C Syrup	120 ml	Dr. Brown
03/27/97	6606700	Allegra 60mg	60 caps	Dr. Brown
04/23/97	6610983	Allegra 60mg	60 caps	Dr. Brown
04/23/97	6610979	Beconase AQ 0.042%	25 spr	Dr. Herzig
05/13/97	4402259	Vicodin 500 5mg	30 tabs	Dr. Fox
05/13/97	6611567	Skelaxin 400mg	30 tabs	Dr. Fox
05/31/97	4402259	Vicodin 500 5mg	30 tabs	Dr. Fox
05/31/97	6610983	Allegra 60mg	60 caps	Dr. Brown
06/01/97	6610979	Beconase AQ 0.042%	25 spr	Dr. Herzig
06/27/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
07/03/97	6610983	Allegra 60mg	60 caps	Dr. Brown
07/03/97	4402013	Valium 10mg	120 tabs	Dr. Polanka
08/07/97	6610979	Beconase AQ 0.042%	25 spr	Dr. Herzig
08/23/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
08/23/97	6614065	Augmentin 500mg	20 tabs	Dr. Brown
09/02/97	4402712	Valium 10mg	120 tabs	Dr. Polanka
09/02/97	6610983	Allegra 60mg	60 caps	Dr. Brown
09/02/97	4402259	Vicodin 500 5mg	30 tabs	Dr. Fox
10/04/97	4403047	Valium 10mg	90 tabs	Dr. Polanka
10/04/97	4402712	Valium 10mg	120 tabs	Dr. Polanka
10/04/97	6610983	Allegra 60mg	60 caps	Dr. Brown
11/02/97	4402259	Vicodin 500 5mg	30 tabs	Dr. Fox
11/02/97	6610979	Beconase AQ 0.042%	25 spr	Dr. Herzig
11/02/97	6610245	Diflucan 150mg	1 tab	Dr. Brown
11/02/97	6610983	Allegra 60mg	60 caps	Dr. Brown
11/28/97	6616725	Diflucan 100mg	7 tabs	Dr. Brown
11/30/97	6610983	Allegra 60mg	60 caps	Dr. Brown
11/30/97	6616774	Augmentin 500mg	20 tabs	Dr. Brown
12/11/97	6616725	Diflucan 100mg	7 tabs	Dr. Brown
01/10/98	6610983	Allegra 60mg	60 caps	Dr. Brown
01/30/98	4403863	Tylenol w/Codeine #3	20 tabs	Dr. Brown
01/30/98	6618638	Augmentin 500mg	20 tabs	Dr. Brown
01/30/98	6618637	Entex	30 tabs	Dr. Brown

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

- (14) In accordance with Section 2929.14 of the Ohio Revised Code, the Butler County Prosecuting Attorney's Office, submitted to this Board a Certified Judgment Entry which indicated that on August 13, 1999, Joseph John Zika, Jr. was convicted of

Theft of Drugs under Section 2913.02 of the Ohio Revised Code. State Of Ohio vs. Joseph J. Zika, Case No. CR99-05-0654, Butler County Common Pleas Court.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (14) of the Findings of Fact constitutes being guilty of a felony as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (14) 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) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (12) 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 Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued September 8, 1999.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Joseph John Zika, Jr.:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-1-10192, held by Joseph John Zika, Jr. 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 set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-1-10192, held by Joseph John Zika, Jr. 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 set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-1-10192, held by Joseph John Zika, Jr. effective as of the date of the mailing of this Order.

Division (B) of Section 4729.16 of the Ohio Revised Code provides: "Any individual whose identification card is revoked, suspended, or refused, shall return his identification card and license to the offices of the state board of pharmacy within ten days after receipt of notice of such action." The wall certificate and identification card should be forwarded by certified mail, return receipt requested.

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Littlejohn and approved (Aye-8/Nay-0).

RES. 2000-067 Mr. Winsley announced that the following Settlement Agreement in the matter of William Eaton Urfer, R.Ph. (03-1-08830) had been signed by all parties and would be effective as of the date of the Board President's signature:

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-990511-046)

In The Matter Of:

WILLIAM EATON URFER, R.Ph.
3130 Santos
Kalamazoo, Michigan 49007
(R.Ph. No. 03-1-08830)

This Settlement Agreement is entered into by and between William Eaton Urfer 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.

William Eaton Urfer 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 in the issues contained herein.

William Eaton Urfer is knowingly and voluntarily acknowledging that, in order to settle the disciplinary charges that have been filed by the Board against him and in order to obviate the need to conduct an administrative hearing to consider possible disciplinary sanctions against his 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) William Eaton Urfer neither admits nor denies the allegations stated in the Notice; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same:
 - (a) Records of the Ohio State Board of Pharmacy indicate that William Eaton Urfer was originally licensed in the State of Ohio on August 14, 1967, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
 - (b) On or about December 3, 1996, an Administrative Complaint was filed by the Michigan Department of Consumer and Industry Services, Bureau of Occupational and Professional Regulation, Board of Pharmacy, Disciplinary Subcommittee against you alleging:
 - (i) On September 27, 1995, you utilized prescription number 700091 to dispense clobetasol propionate 0.05% (Temovate Ointment) to a family member without a valid prescription.
 - (ii) On September 27, 1995; November 27, 1995; December 21, 1995; and January 18, 1996 you utilized prescription number 700090 to dispense sixty (60) tablets of guaifenesin/phenylpropanolamine hydrochloride 400/75 (Entex LA) to a patient without a valid prescription.
 - (iii) On October 7, 1995, you utilized prescription number 701015 to dispense Synalar ointment 0.025% to a patient without a valid prescription.
 - (iv) On October 16, 1995, you utilized prescription number 701817 to dispense seventy (70) units of Mycelex Troche 10mg to a patient without a valid prescription.
 - (v) On October 17, 1995, you utilized prescription number 701932 to dispense Vancenase AQ 0.042% nasal spray to a patient without a valid prescription.
 - (vi) On December 12, 1995, you transferred prescription number 364317 to another pharmacy allowing thirty (30) tablets of Ambien 10mg to be dispensed to a patient without a valid prescription on December 12, 1995; February 12, 1996; April 4, 1996; and May 20, 1996.

- (vii) On December 21, 1995 and April 2, 1996, you utilized prescription number 706943 to dispense one-hundred (100) tablets of Synthroid 0.075mg to a patient without a valid prescription.
- (viii) On December 22, 1995, you utilized prescription number 707051 to dispense one-hundred (100) tablets of chlorpromazine 25mg (Thorazine) to a patient without a valid prescription.
- (ix) On February 26, April 20, and June 12, 1996, you utilized prescription number 712263 to dispense one-hundred (100) tablets of Glucophage 500mg to a patient without a valid prescription.
- (x) On or about July or August 1996, you requested and received backdated prescriptions for the aforementioned drugs from a physician who never treated nor examined the patient.

On or about October 10, 1997, a Consent Order and Stipulation was filed, wherein your license was suspended in the State of Michigan for thirty (30) days, followed by probation. Such conduct, if committed in Ohio, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy and/or willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. within the meaning of Section 4729.16 of the Ohio Revised Code.

- (3) On or about July 27, 1998, you were indicted on three felony counts of Health Care Fraud-False Claim. State of Michigan vs. William Eaton Urfer, Case No. D98-0835, Kalamazoo County Circuit Court. On January 8, 1999, you pled to one count of Health Care Fraud which is a felony in the state of Michigan. As part of the agreement, Counts Two and Three (both Health Care Fraud charges) were dismissed. This plea was taken under delayed sentence status. Such conduct, if committed in Ohio, constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy and/or willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. within the meaning of Section 4729.16 of the Ohio Revised Code.
- (4) On or about August 2, 1997, you knowingly made a false statement with purpose to secure issuance by a governmental agency of a license, permit, or registration, to wit: you declared on your 1998 pharmacist license renewal application that within the prior eighteen (18) months you had not "been the subject of disciplinary action by any state or federal agency." Approximately eight months earlier, on December 3, 1996, a seven count Administrative Complaint was filed with the State of Michigan Board of Pharmacy, Disciplinary Committee. In the Matter: William E. Urfer, R.Ph., State of Michigan, Department of Consumer and Industry Services, Board of Pharmacy, File No. 53-96-0821-00. Such conduct is in violation of Section 2921.13(A)(5) of the Ohio Revised Code, and if proven, constitutes being guilty of a felony or gross immorality and/or guilty of dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

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

- (A) The thirty (30) day suspension of his pharmacist identification card, No. 03-1-08830.
 - (1) Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, William Eaton Urfer may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such suspension.
 - (2) Division (B) of Section 4729.16 of the Revised Code provides that: "Any individual whose identification card is ... suspended, ... shall return his identification card and certificate of registration to the office 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.

- (B) The board will automatically reinstate pharmacist identification card, No. 03-1-08830, after the thirty (30) day suspension.

William Eaton Urfer 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.

William Eaton Urfer 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 subject to this Agreement. William Eaton Urfer 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/ William E Urfer /d/ 10-4-99
William Eaton Urfer, Respondent Date of Signature

Blake D. Crocker, Attorney for Respondent Date of Signature

/s/ Robert B Cavendish /d/ 10/6/99
Robert B. Cavendish, President, Ohio State Board of Pharmacy Date of Signature

/s/ Sally Ann Steuk /d/ 10-6-99
Sally Ann Steuk, Ohio Assistant Attorney General Date of Signature

9/10/99dlr/tt

12:50 p.m.

The Board took a brief recess for lunch.

1:40 p.m.

The State Board of Pharmacy reconvened in Room 1948, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with all members present.

The Board met with the following representatives from the four Ohio Colleges of Pharmacy:

Daniel Acosta and Robert Lee – University of Cincinnati
John Cassady and Ken Hale – Ohio State University
Wayne Hoss – University of Toledo
Thomas Kier – Ohio Northern University
Alan Escovitz – Council of Ohio Colleges of Pharmacy

Items discussed included:

Exam results.
Issues relating to the number of pharmacists available.
State funding to support clinical training.
Internet Pharmacy and NABP's VIPPS program.
House Bill 241.

3:05 p.m.

The meeting with the representatives from the colleges ended.

3:12 p.m.

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

PER DIEM	<u>09/15</u>	<u>09/16</u>	<u>09/23</u>	<u>10/04</u>	<u>10/05</u>	<u>10/06</u>	<u>Total</u>
Abele	1	1	1	1	1	1	6
Adelman	1	-	-	1	1	1	4
Cavendish	1	-	-	1	1	1	4
Eastman	-	-	-	1	1	1	3
Giacalone	1	-	-	1	1	1	4
Kost	1	-	-	1	1	1	4
Littlejohn	1	-	-	1	1	1	4
Neuber	-	1	-	-	1	1	3
Repke	-	-	-	1	1	1	3

The motion was seconded by Mrs. Adelman and approved by the Board (Aye-8/Nay-0).

3:15 p.m.

Mrs. Adelman moved that the meeting be adjourned. The motion was seconded by Mr. Repke and approved (Aye-8/Nay-0).

<u>/s/</u>	<u>Robert B Cavendish</u>	<u>/d/</u>	<u>11/18/99</u>
	Robert B. Cavendish, President		Date

<u>/s/</u>	<u>W T Winsley</u>
	William T. Winsley, Executive Director