

Minutes Of The Meeting

Ohio State Board of Pharmacy
May 12 & 13, 2003

MONDAY, MAY 12, 2003

10:12 a.m. ROLL CALL

The State Board of Pharmacy convened in Room West-B&C, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Diane C. Adelman, R.Ph. (President); Robert P. Giacalone, R.Ph. (Vice-President); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Elizabeth I. Gregg, R.Ph.; Lawrence J. Kost, R.Ph.; Nathan S. Lipsyc, R.Ph.; Dorothy S. Teater, Public Member; and James E. Turner, R.Ph.

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

10:13 a.m.

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

12:00 p.m.

The Executive Session ended and the meeting was opened to the public. Mr. Rowland announced that the following settlement agreement for Harold Eugene Fletcher, R.Ph., previously approved by the Board, had been signed by all parties and was now effective as of the date of the Board President's signature:

R-2003-158

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

(Docket No. D-020626-065)

In The Matter Of:

HAROLD EUGENE FLETCHER, R.Ph.

228 Wilson Avenue
Columbus, Ohio 43205
(R.Ph. No. 03-1-19231)

This Settlement Agreement is entered into by and between Harold Eugene Fletcher 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.

Harold Eugene Fletcher 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.

Harold Eugene Fletcher 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 Harold Eugene Fletcher'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) Harold Eugene Fletcher neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated June 26, 2002; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same:

(1) Records of the Board of Pharmacy indicate that you were originally licensed in the State of Ohio on February 28, 1992, pursuant to examination. Records also indicate that your license to practice pharmacy expired on September 15, 2001. You filed your renewal application, in person, on or about September 18, 2001.

(2) You did, on or about September 17, 2001, while not a pharmacist as defined in Rule 4729-5-01(G) of the Ohio Administrative Code, or a pharmacy intern, sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: after your license to practice pharmacy had lapsed, and prior to its renewal, you dispensed dangerous drugs, including the following:

<u>Rx #</u>	<u>Drug</u>
366317	hydrocodone w/ APAP 5/500
366318	diazepam 10mg
366319	Adipex-P 37.5mg
366320	hydrocodone w/ APAP 7.5/750

Such conduct is in violation of Section 4729.28 of the Ohio Revised Code, and if proven constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy and/or guilty of willfully violating provisions of Chapter 4729. of the Ohio Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

(3) You did, on or about September 18, 2001, knowingly make a false statement when made with purpose to secure the issuance by a governmental agency a license, permit, or registration, to wit: when renewing your license to practice pharmacy, you indicated that you did not have any criminal charges pending against you. In fact, on September 3, 2001, you had been arrested for three (3) felony counts of Carrying a Concealed Weapon. State of Ohio vs. Eugene H. Fletcher, Case No. CRA-01-00552, Harrison County Court and seven (7) misdemeanor counts of Improper Handling of Firearms in a Motor Vehicle. State of Ohio vs. Eugene H. Fletcher, Case No. CRB-01-00553, Harrison County Court. Said charges were still pending on the date you submitted your license renewal application. On November 20, 2001, you pled guilty to four (4) counts of Improper Handling of Firearms in a Motor Vehicle, a misdemeanor of the first degree under Section 2923.16(B) of the Ohio Revised Code. State of Ohio vs. Eugene H. Fletcher, Case No. CRA-01-553, Harrison County Court. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code, and if proven constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

(4) You, as the Responsible Pharmacist did, on or about May 5, 2000, fail to maintain the minimum standards for a pharmacy, to wit: East Main Street Pharmacy did not possess a copy of current federal and state laws, regulations, and rules governing the legal distribution of drugs in the state of Ohio. The pharmacy's lawbook had not been updated since August, 1997. You, as the Responsible Pharmacist at Hilltop Family Pharmacy, had been previously admonished for a similar violation on April 11, 1997. Such conduct is in violation of Rule 4729-9-02 of the Ohio Administrative Code, and if proven constitutes being guilty of unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

(5) You, as the Responsible Pharmacist did, from January 21, 1999, through May 2, 2000, failed to keep records of all controlled substances received or sold, to wit: you failed to properly execute Schedule II Controlled Substances D.E.A. 222 order forms. Of forty-seven 222 forms examined by Board agents, thirty-nine lacked the required information as to the number of packages received or the date received. You, as the Responsible Pharmacist at Hilltop Family Pharmacy, had been previously admonished for the same violation on April 18, 1997. Such conduct is in violation of Section 3719.07 of the Ohio Revised Code and Section 1305.06 of Title 21 of the Code of Federal Regulations, and if proven constitutes being guilty of unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

(6) You did, on or about May 5, 2000, and dates preceding, fail to immediately sign the reverse side of your pharmacist identification card. You had been previously admonished for a similar violation on April 11, 1997. Such conduct is in violation of Rule 5729-5-02 of the Ohio Administrative Code, and if proven constitutes being guilty of unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

(7) You, as the Responsible Pharmacist did, on or about May 5, 2000, and dates preceding, fail to sign, or have your dispensing pharmacists sign, the pharmacy's daily prescription printouts. Further, the printouts lacked the required indication that the data was reviewed by the dispensing pharmacists and was correct. Such conduct is in violation of Rule 4729-5-28 of the Ohio Administrative Code, and if proven constitutes being guilty of unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

(8) You, as the Responsible Pharmacist did, on or about May 5, 2000, and dates preceding, fail to obtain the registration number of wholesalers from which you purchased dangerous drugs. You had been previously admonished for the same violation on July 9, 1998. Prior to both occasions, in 1998 and 2000, you had made illegal purchases from unlicensed wholesalers; such was preventable if you had properly obtained the required registration information. Such conduct is in violation of Section 4729.60(B) of the Ohio Revised Code, and if proven constitutes being guilty of unprofessional conduct in the practice of pharmacy and/or willfully violating a provision of Chapter 4729. of the Ohio Revised Code 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, Harold Eugene Fletcher knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Harold Eugene Fletcher's pharmacist identification card, No. 03-1-19231, will be placed on probation for five years, effective from the date of this Agreement. The terms of probation are as follows:
- (1) The State Board of pharmacy hereby declares that Harold Eugene Fletcher's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.
 - (2) Harold Eugene Fletcher must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (3) Harold Eugene Fletcher must abide by the rules of the Ohio State Board of Pharmacy.
 - (4) Harold Eugene Fletcher must comply with the terms of this Agreement.
- (B) Harold Eugene Fletcher agrees to the imposition of a monetary penalty of Two Thousand One Hundred and Twenty-five dollars (\$2,125.00) payable over a twelve (12) month period, effective from the 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, 17th Floor, Columbus, Ohio 43266-0320.

If, in the judgment of the Board, Harold Eugene Fletcher 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.

Harold Eugene Fletcher 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.

Harold Eugene Fletcher 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. Harold Eugene Fletcher 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. Harold Eugene Fletcher 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/ Harold Eugene Fletcher</u>	<u>/d/ 4-4-03</u>
Harold Eugene Fletcher, Respondent	Date of Signature

<u>/s/ Brian K. Murphy</u>	<u>/d/ 4-15-2003</u>
Brian K. Murphy, Attorney for Respondent	Date of Signature

<u>/s/ Diane C. Adelman</u>	<u>/d/ 5/12/03</u>
Diane C. Adelman, President, Ohio State Board of Pharmacy	Date of Signature

<u>/s/ Sally Ann Steuk</u>	<u>/d/ 5-12-03</u>
Sally Ann Steuk, Ohio Assistant Attorney General	Date of Signature

- R-2003-159** Mrs. Gregg moved that the Board deny the settlement offer presented in the matter of Abdallah Abukhalil and that the hearing be held as scheduled. The motion was seconded by Mrs. Teater and approved by the Board (Aye-8/Nay-0).
- R-2003-160** Mr. Braylock moved that the Board deny the settlement offer presented in the matter of Robert Berkowitz. The motion was seconded by Mr. Kost and approved by the Board (Aye-6/Nay-0/Abstain-2[Lipsyc, Turner]).
- R-2003-161** Ms. Eastman moved that the Board deny the request for Board approval of an employment situation presented in the matter of Todd Jaros. The motion was seconded by Mr. Kost and approved by the Board (Aye-5/Nay-3).
- R-2003-162** Mr. Turner moved that the Board accept the settlement offer presented in the matter of Michael Linhart, but only if Mr. Linhart agrees to accept the terms as amended by the Board. The motion was seconded by Mr. Braylock and approved by the Board (Aye-8/Nay-0).
- R-2003-163** Ms. Eastman moved that the Board deny the settlement offer presented in the matter of Loretta Ann Nehez and that she must appear before the Board before a decision will be reached regarding her situation. The motion was seconded by Mr. Kost and approved by the Board (Aye-8/Nay-0).
- R-2003-164** Mrs. Gregg moved that the Board deny the continuance request presented in the matter of Philip Garber and that the hearing be held as scheduled. The motion was seconded by Mr. Turner and approved by the Board (Aye-8/Nay-0).
- R-2003-165** Mr. Lipsyc moved that the Board accept the settlement offer presented in the matter of Audley Stevens, R.Ph. The motion was seconded by Mr. Kost and approved by the Board (Aye-8/Nay-0).
- R-2003-166** Ms. Eastman moved that the Board deny the settlement offer presented in the matter of William Ringle. The motion was seconded by Mr. Kost and approved by the Board (Aye-8/Nay-0).
- R-2003-167** Mr. Lipsyc moved that the Board accept the settlement offers presented in the matters of C. Jere Hochadel, A. William Richert, Kevin Snyder, and Matthew C. Campbell. The motion was seconded by Mr. Kost and approved by the Board (Aye-7/Nay-1).

- R-2003-168** Mr. Winsley announced that, pursuant to Section 3719.121(C) of the Revised Code, a Summary Suspension had been issued to Todd Latour, R.Ph. (03-3-11902) based upon a criminal conviction.
- 12:15 p.m. The Board recessed for lunch.
- 1:53 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 Patty Jane Baxter, R.Ph., Austinburg.
- 3:13 p.m. The hearing ended and the record was closed.
- 3:25 p.m. After a review of the draft minutes from the April, 2003 meeting, Mrs. Gregg moved that the April, 2003, minutes be approved as amended. The motion was seconded by Mr. Lipsyc and approved by the Board (Aye-8/Nay-0).
- R-2003-169** Mr. Keeley then presented a request from Medtuity EMR for Board approval as an electronic prescribing system. After discussion, Mrs. Gregg moved that the Board find the Medtuity EMR system approvable pending final inspection. The motion was seconded by Mr. Braylock and approved by the Board (Aye-8/Nay-0).
- R-2003-170** The Board next considered a request from ChartLogic for Board approval of their electronic prescribing system. After discussion, Mrs. Gregg moved that the system be considered approvable pending final inspection only after the Board's suggested changes are implemented by ChartLogic. The motion was seconded by Mr. Lipsyc and approved by the Board (Aye-8/Nay-0).
- A request from University Home Care Services/Worthington for Board approval as a Provider of Continuing Pharmacy Education was tabled pending receipt of additional materials missing from the application packet.
- Mr. Keeley discussed his Legislative Report with the Board.
- Mr. McMillen discussed his Licensing Report with the Board.
- 5:24 p.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Revised Code. The motion was seconded by Mr. Turner and a roll call vote was conducted by President Adelman as follows: Braylock-Yes, Eastman-Yes, Giacalone-Yes, Gregg-Yes, Kost-Yes, Lipsyc-Yes, Teater-Yes, and Turner-Yes.
- 5:30 p.m. **R-2003-171** The Executive Session ended and the meeting was opened to the public. Mr. Kost moved that the Board adopt the following Order in the matter of Patty Jane Baxter, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-020405-050)

In The Matter Of:

PATTY JANE BAXTER, R.Ph.
2058 State Route 45, Apt. #3
Austinburg, Ohio 44010
(R.Ph. No. 03-1-17642)

INTRODUCTION

THE MATTER OF PATTY JANE BAXTER CAME FOR HEARING ON MAY 12, 2003, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: DIANE C. ADELMAN, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

PATTY JANE BAXTER WAS NOT REPRESENTED BY COUNSEL AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

None

Respondent's Witnesses

1. Patty Jane Baxter, R.Ph., Respondent
2. Susan Robinson
3. Walter Hubish, R.Ph.

State's Exhibits

1. Reinstatement Hearing Request letter from Patty J. Baxter [04-01-02]
- 1A-1F. Procedurals
2. Copy of State Board of Pharmacy Order in re Patty Jane Baxter, R.Ph. [04-05-01]
3. Copy of State Board of Pharmacy Settlement Agreement in re Patty Jane Baxter, R.Ph. [03-08-99]
4. Copy of Statement of Patty J. Baxter [08-26-98]
5. Copy of Notarized Statement of Patty J. Baxter [09-02-98]
6. Copy of Above Average Controlled Drug Purchases Report for Stadol at Rite Aid Store #2654 [08-13-98]
7. Rite Aid Pharmacy Customer History Report for Patient #1 [01-01-97 to 08-27-98]
8. Rx #44994, Rx 44996 [07-16-97]; Rx #49784, Rx #49785 [10-07-97]; Rx #59794, Rx #59795 [02-21-98]
9. Rite Aid Pharmacy Customer History Report for Patient #2 [01-01-97 to 08-27-98]
10. Rx #43692, Rx #43693 [06-23-97]; Rx #48388, Rx #48389 [09-15-97]; Rx #53687, Rx #53688 [12-03-97]; Rx #33976, Rx #33978 [02-22-97]; Rx #38396, Rx #38397 [03-21-97]; Rx #53687, Rx #53688 [01-19-98]; Rx #57395, Rx #57396 [01-23-98]
11. Rite Aid Pharmacy Customer History Report for Patient #3 [01-01-97 to 09-02-98]
12. Rx #36091, Rx #36092 [02-07-97]; Rx #41871, Rx #41872 [05-20-97 & 07-29-97]; Rx #46497, Rx #46498 [08-13-97]; Rx #52576, Rx #52577 [11-17-97]
13. Rite Aid Pharmacy Customer History Report for Patient #4 [01-01-97 to 08-27-98]
14. Rx #31290, Rx #31291, Rx #31293 [12-23-96]; Rx #35878, Rx #35879, Rx #35880 [02-03-97]; Rx #70194, Rx #70195, Rx #70196 [06-22-98]; Rx #70898, Rx #70899, Rx #70900 [06-27-98]; Rx #49493, Rx #49494, Rx #49495 [10-03-97]; Rx #49494, Rx #49495 [03-06-98]; Rx #63067 [04-03-98]; Rx #43140, Rx #43141, Rx #43142 [06-13-97]; Rx #63065 [04-03-98]
15. Rite Aid Pharmacy Customer History Report for Patient #5 [01-01-97 to 08-27-98]
16. Rx #38193, Rx #38194 [03-18-97]; Rx #44294 [07-03-97]; Rx #48961 [09-25-97]; Rx #44293 [07-03-97]; Rx #48960 [09-25-97]; Rx #58995, Rx #58996 [03-12-98]; Rx #68329, Rx #68330 [06-03-98 & 07-07-98]; Rx #75177, Rx #75178 [08-07-98]
17. Rite Aid Pharmacy Customer History Report for Patty J. Windler [01-01-95 to 10-16-98]
18. Copy of Notarized Statement of Paula Schaffer-Polakof, M.D. [10-28-98]
19. Copy of Notarized Statement of Azzam Ahmed, M.D. [11-07-98]

20. Rx #11483, Rx #11485 [08-22-95]; Rx #12031 [09-05-95]; Rx #16157 [12-11-95]; Rx #16158 [12-11-95]; Rx #20981 [03-22-96]; Rx #22393 [04-23-96]; Rx #25620 [07-03-96]; Rx #29183, Rx #29184 [09-20-96]; Rx #37346 [03-03-97]; Rx #39257 [04-05-97 & 07-02-97]; Rx #44820 [07-12-97]; Rx #46034 [08-04-97 & 10-27-97]; Rx #46035 [08-04-97 & 10-27-97]; Rx #51110, Rx #51111, Rx #51115 [10-27-97]; Rx #53078 [11-24-97]
21. [REDACTED]
22. Order (Granting treatment in lieu of conviction) [01-15-99]
23. Indictment, State of Ohio vs Patty J. Baxter-Windler, Case No. 98CR369995, Cuyahoga County Common Pleas Court [12-17-98]
24. Journal Entry (Plea) [03-03-99]
25. Journal Entry (Sentencing) [03-31-99]
26. Copy of Notarized Letter from David F. Merk [06-02-02]
27. Internal Theft Form [10-01-98]

Respondent's Exhibits

- A. Copy of State Board of Pharmacy Settlement Agreement in re Patty Jane Baxter, R.Ph. [03-08-99]; Copy of State Board of Pharmacy Order in re Patty Jane Baxter, R.Ph. [04-05-01]
- B. Copy of PRO Pharmacist's Recovery Contract for Patty J. Baxter [12-09-98]; Copy of PRO Pharmacist's Recovery Contract for Patty J. Baxter [10-11-00]
- C. Drug Screen Reports [02-17-99 to 07-25-02]; Compass Vision, Inc. Licensee Summary Report [07-25-02 to 03-28-03]; Adult Parole Authority Individual Specimen Reports [06-17-99 to 02-18-00]
- D. Support Group Attendance Records [12-02-98 to 05-10-03]; Certificates of Appreciation and Merit [10-31-99 to 01-02-03]
- E. Copy of Treatment Compliance letter from Pamela R. D'Angelo, CCDC III [09-27-00], Glenbeigh Health Sources Discharge Summary re Patty Windler [02-18-99]; Copy of Treatment Compliance letter from Pat Weston-Hall, MSSA, LISW and Pamela R. D'Angelo, CCDC III [02-26-01]; Kaiser Permanente Alcohol/Chemical Dependency Program Treatment Contracts of Patty Baxter [06-26-01 to 06-11-02]; Copy of Treatment Compliance letter from Tony Serna, MA, LSW, CCDC III [08-21-02]; Copy of letter from James Welch, CCDC III E [08-19-02]; Copy of letter from Bill Williams, CCDC-3-E [08-29-02]
- F. Copy of letter from Tom Warmouth, State Parole/Probation Officer [04-18-03], [REDACTED] Plea Agreement [01-07-99]; State of Ohio Adult Parole Authority Conditions of Supervision [01-07-99]; Judgment Entry, [10-27-00]; Copy of restitution letter from Patty J. Baxter [06-28-02]; Copy of Promissory Note re Patty J. Baxter [05-02-03]; Fax cover sheet from Rite Aid Corporation [05-07-03], Fax cover sheet from Jewish Family Service Association [05-07-03], Copies of restitution letters from Dawn Kreiger [07-25-02 to 05-01-03], Copies of restitution money orders and checks [06-28-02 to 05-09-03]
- G. Letters from Deborah Ewing-Wilson, D.O. [04-21-03, 08-15-02], Donald J. Goddard, M.D. [09-28-00]
- H. Twenty-four Letters of Support [09-13-00 to 05-05-03]
- G. Copy of Continuing Pharmacy Education Credits and Certificates [04-23-96 to 05-09-03]

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 Patty Jane Baxter has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-000406-056, effective April 5, 2001.

DECISION OF THE BOARD

On the basis of the Finding of Fact set forth above, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card, No. 03-1-17642, held by Patty Jane Baxter and places Patty Jane Baxter on probation for five years effective as of the date of the mailing of this Order, with the following conditions:

(A) Patty Jane Baxter must enter into a contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. The contract must provide that:

(1) Random, observed urine drug screens shall be conducted at least once each month 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 and butorphanol (Stadol) 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. Any positive results, including those that may have resulted from ingestion of food, but excluding false positives that resulted from medication legitimately prescribed, indicate a violation of probation.

(d) Refusals of urine screens or diluted urine screens are equivalent to a positive result and indicate a violation of probation.

(2) The intervener/sponsor shall provide copies of all drug and alcohol screen reports to the Board in a timely fashion.

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

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

(B) Patty Jane Baxter 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 Patty Jane Baxter's progress towards recovery and what Patty Jane Baxter 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 Patty Jane Baxter'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) Patty Jane Baxter may not serve as a responsible pharmacist.

(3) Patty Jane Baxter may not destroy, assist in, or witness the destruction of controlled substances.

(4) Patty Jane Baxter must, during the first six months of practice, work only with a pharmacist whose license is in good standing.

(5) Patty Jane Baxter may not, during the first six months of practice, work in a pharmacy more than 25 hours per week. Patty Jane Baxter may not begin working full-time until a performance evaluation has been conducted and states that Patty Jane Baxter is ready to move to full-time.

(6) Patty Jane Baxter must make full restitution to Rite Aid Discount Pharmacy #2654. Failing to make restitution before the end of her probation indicates a violation of probation and Patty Jane Baxter must appear before the Board.

(7) Patty Jane Baxter must abide by the contract with her treatment provider and must immediately report any violation of the contract to the Board.

(8) Patty Jane Baxter must not violate the drug laws of Ohio, any other state, or the federal government.

(9) Patty Jane Baxter must abide by the rules of the State Board of Pharmacy.

(10) Patty Jane Baxter must comply with the terms of this Order.

(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.

Patty Jane Baxter 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.

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

MOTION CARRIED.

SO ORDERED.

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

5:32 p.m.

The Board meeting recessed until Tuesday, May 13, 2003.

TUESDAY, MAY 13, 2003

8:30 a.m. ROLL CALL

The State Board of Pharmacy convened in Room West-B&C, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Diane C. Adelman, R.Ph. (President); Robert P. Giacalone, R.Ph. (Vice-President); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Elizabeth I. Gregg, R.Ph.; Lawrence J. Kost, R.Ph.; Nathan S. Lipsyc, R.Ph.; Dorothy S. Teater, Public Member; and James E. Turner, R.Ph.

A brief report was given by members and staff who had attended the NABP Annual Meeting that had been held the previous week.

9:07 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 Mark Alan Moore, R.Ph., Riverside.

10:20 a.m.

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

10:45 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 Alice M. Spickler, R.Ph., Medina.

11:42 a.m.

The hearing ended and the record was closed. The Board recessed for lunch.

1:30 p.m.

With all members present, the Board convened in Room South-A, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, for the purpose of meeting with the candidates for licensure by reciprocity.

R-2003-172

Following presentations by Board members and self-introductions by the candidates for licensure by reciprocity, the following candidates participated in a discussion of pharmacy laws and rules with Mr. McMillen and were then presented with their pharmacist identification cards.

HOWARD DICKTER	03-3-25683	NEW JERSEY
GLENN E. ELDRIDGE	03-3-25747	INDIANA
KENNETH GEORGE FRISARD, JR.	03-3-25705	ARIZONA
JENNIFER BURIG HEYMAN	03-3-25710	WEST VIRGINIA
ANDREA LYNN HOLSTEIN	03-3-25659	MASSACHUSETTS
ANITHA JOHN	03-3-25652	TEXAS
MICHAEL PETER KAVULA, JR.	03-3-25718	MASSACHUSETTS
LEE ANN KITKO	03-3-25694	TEXAS
DELORES ANN KUTZER	03-3-25667	PENNSYLVANIA
DEBRA SUSAN LEVIN	03-3-25698	VIRGINIA
KARA ANN REES	03-3-25707	VIRGINIA
MARY BETH WALSH	03-3-25676	PENNSYLVANIA

1:50 p.m.

R-2003-173

The Board reconvened in Room West-B&C. Mr. Winsley presented a request from OnCallData for Board approval as an electronic prescribing system. After discussion, Mrs. Gregg moved that the Board find the OnCallData system approvable pending final inspection. The motion was seconded by Ms. Eastman and approved by the Board (Aye-8/Nay-0).

R-2003-174

The Board next considered a request from Wyandot Memorial Hospital (02-0034750) for an exemption to Rule 4729-5-10 (Pick-up station) so that patient-specific prescriptions for hyaluronidase could be prepared at Central Ohio Compounding Pharmacy (02-1050650) and delivered to Wyandot Memorial Hospital for distribution to the patients. After discussion, Mrs. Gregg moved that the Board approve the request due to the need for involvement by a health care professional in the patient's drug therapy [OAC Rule 4729-5-10(B)(5)(b)]. The motion was seconded by Mr. Braylock and approved by the Board (Aye-8/Nay-0).

2:10 p.m.

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

3:30 p.m.

R-2003-175

The Executive Session ended and the meeting was opened to the public. Mrs. Teater moved that the Board adopt the following Order in the matter of Mark Alan Moore, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-021021-021)

In The Matter Of:

MARK ALAN MOORE, R.Ph.

5146 Christy Avenue
Riverside, Ohio 45431
(R.Ph. No. 03-1-19236)

INTRODUCTION

THE MATTER OF MARK ALAN MOORE CAME FOR HEARING ON MAY 13, 2003, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: DIANE C. ADELMAN, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

MARK ALAN MOORE WAS REPRESENTED BY RICHARD P. ARTHUR AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

None

Respondent's Witnesses

1. Mark Alan Moore, R.Ph., Respondent

State's Exhibits

1. Reinstatement Hearing Request letter from Mark A. Moore [10-10-02]
1A-1D. Procedurals
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
14. Copy of Renewal Application for Pharmacist License to Practice Pharmacy from 09-15-98 to 09-15-99 of Mark Alan Moore [07-07-98]
15. Copy of Renewal Application for Pharmacist License to Practice Pharmacy from 09-15-99 to 09-15-00 of Mark Alan Moore [07-08-99]

Respondent's Exhibits

- A. Copy of PRO Pharmacist's Recovery Contract for Mark Moore [05-03-02]; Pro Quarterly Reports from Mark A. Moore [06-09-02 to 04-05-03]
- B. Compass Vision Licensee Summary Report [05-28-02 to 05-06-03]; Letter from Melissa A. Mutter [05-09-03]; Specimen Chain of Custody Forms [05-28-02 to 05-06-03]
- C. Calendar for May 2002 to June 2003; Support Group Attendance Records [05-06-02 to 05-12-03]
- D.
- E. Certificate of Achievement for Mark Moore [02-06-02]; Letter from Allan Miller MS, PCC [05-03-02]; Miami Valley Hospital Discharge Summary re Mark Moore [02-06-02]; Letter from Allan Miller MS, PCC [05-14-02]; Letter from Randy Young, B.S., OCB REG CAND, Intern/Primary Therapist [09-12-02]; Nova House Association, Inc. 30 Day Summary/-Progress Reports re Mark Moore [09-02 to 04-30-03]; Letter from Massimo DeMarchis, Psy., D., CCDC III E [03-28-03]; Letter from Melissa A. Mutter [04-08-03]; Letter from Randy Young, B.S., OCB REG CAN, Intern/Primary Therapist [04-10-03]
- F.
- G. Continuing Pharmaceutical Education Credits and Certificates [08-19-02 to 04-07-03]

FINDING OF FACT

After having heard the testimony, observed the demeanor of the witness, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds that Mark Alan Moore has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-020109-031, effective April 11, 2002.

DECISION OF THE BOARD

On the basis of the Finding of Fact set forth above, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card, No. 03-1-19326, held by Mark Alan Moore to practice pharmacy in Ohio and places Mark Alan Moore on probation for five years effective as of the date of the mailing of this Order, with the following conditions:

(A) Mark Alan Moore must enter into a contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. The contract must provide that:

(1) Random, observed urine drug screens shall be conducted at least once each month 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 and alcohol screens must be negative. Any positive results, including those that may have resulted from ingestion of food, but excluding false positives that resulted from medication legitimately prescribed, indicate a violation of probation.

(c) Refusals of urine screens or diluted urine screens are equivalent to a positive result and indicate a violation of probation.

(2) The intervener/sponsor shall provide copies of all drug screen reports to the Board in a timely fashion.

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

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

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

(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.

Mark Alan Moore 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.

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

MOTION CARRIED.

SO ORDERED.

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

R-2003-176 Mr. Braylock then moved that the Board adopt the following Order in the matter of Alice M. Spickler, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-021106-028)

In The Matter Of:

ALICE M. SPICKLER, R.Ph.

4041 Fairway Drive

Medina, Ohio 44256

(R.Ph. No. 03-2-18197)

INTRODUCTION

THE MATTER OF ALICE M. SPICKLER CAME FOR HEARING ON MAY 13, 2003, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: DIANE C. ADELMAN, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

ALICE M. SPICKLER WAS NOT REPRESENTED BY COUNSEL AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

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

Respondent's Witnesses

1. Alice M. Spickler, R.Ph., Respondent
2. Linda VanMeter
3. Lillian Greer

State's Exhibits

1. Copy of Notice of Opportunity For Hearing [11-06-02]
1A-1C. Procedurals
2. Copy of Rx #330889 [02-20-02]
3. Buehler's Pharmacy Label for Rx #330889 [02-20-02]
4. Photocopy of Rx #330889 Famvir 500 mg pill packet and patient advisory leaflet [02-20-02]
5. Buehler's River Styx #11 Patient Profile for Maud Piar [01-01-02 to 05-02-02]
6. Photograph of Maud Piar [03-09-02]
6A-6C. Photographs of Maud Piar [03-09-02 to 05-17-02]
7. Copy of Dangerous Drug Distributor Inspection Report of Buehler Pharmacy #11 [05-02-02]
8. Copy of Dangerous Drug Distributor Inspection Report of Buehler Pharmacy #11 [05-09-02]
9. Copy of Pink Sheet response from Alice M. Spickler, R.Ph. [05-12-02]
10. Copy of Notarized Statement of Alice M. Spickler [05-02-02]
11. Copy of Notarized Statement of Herbert E. Croft, M.D. [05-10-02]
12. Notarized Statement of Maud Piar [05-09-02]
13. Fourteen-page copy of Signature Log [02-19-02 to 02-21-02]
14. Twelve-page copy of Signature Log [03-06-02 to 03-07-02]
15. Copy of Pink Sheet response from Alice M. Spickler, R.Ph. [05-12-02]

Respondent's Exhibits

None

FINDINGS OF FACT

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

- (1) Records of the State Board of Pharmacy indicate that Alice M. Spickler was originally licensed by the State of Ohio as a pharmacist on January 23, 1990, pursuant to reciprocity, and is currently licensed to practice pharmacy in Ohio. Records further reflect that, during the relevant time periods stated herein, Alice M. Spickler was the Responsible Pharmacist at Buehler's Pharmacy #11 pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) Alice M. Spickler did, on or about February 20, 2002, misbrand a drug, to wit: when Alice M. Spickler received Rx #330889 written for Famvir 500 mg #21, she dispensed FemHRT, which had not been prescribed by the physician. The patient was subsequently harmed and was admitted to the hospital. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(3) Alice M. Spickler as the Responsible Pharmacist did, on February 20, 2002, fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing Rx #330889, Alice M. Spickler and/or pharmacists under her control failed to review the original prescription and/or refill information for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Alice M. Spickler and/or pharmacists under her control failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.

CONCLUSION OF LAW

The State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy takes the following actions in the matter of Alice M. Spickler:

(A) On the basis of the Findings of Fact and Conclusion of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of two hundred fifty dollars (\$250.00) on Alice M. Spickler and payment of the monetary penalty is due and owing within thirty days of the mailing of this Order. The remittance should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

(B) Alice M. Spickler must submit documentation to the Board of successful completion, within six months after the effective date of this Order, of two hours (0.2 CEUs) of approved continuing pharmacy education in preventing medication errors, which may not also be used for license renewal.

(C) Alice M. Spickler is hereby placed on probation for six months from the effective date of this Order or until the Board receives the documentation as required in paragraph (B) above.

(D) Alice M. Spickler must comply with the terms of this Order.

Alice M. Spickler 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.

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

MOTION CARRIED.

SO ORDERED.

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

R-2003-177 Elections for Board officers for FY 2004 (July 1, 2003-June 30, 2004) were held with the following results:

President – Robert P. Giacalone

Vice-President – Lawrence J. Kost

3:38 p.m.

Mrs. Gregg moved that the Board receive Per Diem as follows:

PER DIEM	<u>04/23</u>	<u>05/12</u>	<u>05/13</u>	<u>Total</u>
Adelman	-	1	1	2
Braylock	1	1	1	3
Eastman	1	1	1	3
Giacalone	-	1	1	2
Gregg	-	1	1	2
Kost	-	1	1	2
Lipsyc	-	1	1	2
Teater	1	1	1	3
Turner	-	1	1	2

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

3:40 p.m.

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

Diane C. Adelman, President

Date

William T. Winsley, Executive Director