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Minutes Of The Meeting

Ohio State Board of Pharmacy
Columbus, Ohio
May 4, 5, 6, 1998

MONDAY, MAY 4, 1998

8:17 a.m. ROLL CALL

The State Board of Pharmacy convened in Room 1914, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Joseph J. Maslak, R.Ph. (Vice-President); Diane Adelman, R.Ph.; Robert Cavendish, R.Ph.; Suzanne Neuber, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

Joining the Board were Sally Ann Steuk, Assistant Attorney General; William Winsley, Assistant Executive Director; Tim Benedict, Compliance Administrator; and David Rowland, Legal Affairs Administrator.

Mr. Repke moved that the Board go into Executive Session for the purpose of conferring with the Assistant Attorney General regarding the investigation of charges and complaints against licensees and registrants. The motion was seconded by Mr. Cavendish and a roll call vote was conducted by Vice-President Maslak as follows: Adelman-Yes, Cavendish-Yes, Maslak-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

8:19 a.m.

Board member Paul Lamping arrived and joined the meeting.

8:25 a.m.

Assistant Attorney General Diane Weaver arrived and joined the meeting.

8:30 a.m.

Board member John Hanna arrived and joined the meeting.

8:32 a.m.

Board member Amonte Littlejohn arrived and joined the meeting.

9:22 a.m.

The Executive Session was concluded and the meeting opened to the public. The meeting was recessed for fifteen minutes.

9:45 a.m.

RES. 98-191

The Board reconvened and Mrs. Neuber moved that the Board deny the proposal to enter into a settlement agreement in the matter of Henry Hiner, R.Ph. and that the adjudication hearing be held as scheduled at 1:00 p.m. The motion was seconded by Mr. Repke and approved by the Board (Aye-7/Nay-0).

RES. 98-192

Mrs. Neuber moved that the Board deny the proposal to enter into a settlement agreement in the matter of Sanford P. Horvat, R.Ph. and that the adjudication hearing be held as scheduled at 3:00 p.m. The motion was seconded by Mr. Repke and approved by the Board (Aye-7/Nay-0).

RES. 98-193 Mrs. Neuber moved that the Board approve the request to continue the hearing in the matter of Danny E. Christin, R.Ph. The motion was seconded by Mr. Repke and approved (Aye-4/Nay-3/Abstain-1[Lamping]).

Staff reported that the hearing scheduled for Tuesday at 9:00 a.m. in the matter of Darshan Singh Bambrah, R.Ph. had been continued until a later date.

10:01 a.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in the matter of Isaac Blair, R.Ph. pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code.

12:26 p.m.

All evidence and testimony having been entered into the record, the hearing was concluded and the Board recessed for lunch.

1:16 p.m.

The Board reconvened in Room 1914 and was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in the matter of Henry Hiner, R.Ph. pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code.

2:35 p.m.

All evidence and testimony having been entered into the record, the hearing was concluded. Mr. Maslak moved that the Board go into Executive Session for the purpose of considering the evidence and testimony received in the matter of R.Ph. Henry Hiner. The motion was seconded by Mr. Hanna and a roll call vote was conducted by President Littlejohn as follows: Adelman-Yes, Cavendish-Yes, Hanna-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

2:51 p.m.

RES. 98-194

The Executive Session was concluded and the meeting opened to the public. Mrs. Plant moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-980209-036)

In The Matter Of:

HENRY N. HINER, R.Ph.
607 Country Club Lane
Ashland, Ohio 44805
(R.Ph. No. 03-1-07532)

INTRODUCTION

THE MATTER OF HENRY N. HINER CAME TO HEARING ON MAY 4, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: AMONTE B. LITTLEJOHN, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; JOSEPH J. MASLAK, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

HENRY N. HINER WAS REPRESENTED BY DAVID W. GRAUER, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Paul Kover, R.Ph., Ohio State Board of Pharmacy
- (2) Kevin J. Kinneer, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Henry N. Hiner, Respondent
- (B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter dated February 9, 1998.
- (2) Exhibit 1A--Notice of Appearance and Certificate of Service in the Matter of Henry N. Hiner dated February 24, 1998; and Request for Hearing and Certificate of Service in the Matter of Henry N. Hiner dated February 24, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated February 24, 1998.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated February 26, 1998.
- (5) Exhibit 1D--Copy of Pharmacist File Front Sheet of Henry Norton Hiner showing original date of registration as August 28, 1961; and two-page copy of Renewal Application for Pharmacist License, No. 03-1-07532, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Henry N. Hiner dated July 13, 1997.
- (6) Exhibit 2--Prescription No. 64458.
- (7) Exhibit 3--Prescription No. 16670.
- (8) Exhibit 4--Rite Aid Pharmacy #02394 Refill Listing Register report dated August 29, 1996.
- (9) Exhibit 5--Four-page handwritten statement of Henry N. Hiner signed and notarized on November 6, 1996.
- (10) Exhibit 6--Two-page handwritten statement of Ingrid Griffiths signed and notarized on December 11, 1996.
- (11) Exhibit 7--Three-page handwritten statement of Colleen Shaughency signed and notarized on December 11, 1996.
- (12) Exhibit 8--Two-page handwritten statement of Susan E. Price signed and notarized on December 11, 1996.
- (13) Exhibit 9--Five-page copy of vial, prescription number 16670, for Betty Kegley dated August 28, 1996.
- (14) Exhibit 10--Three-page Dangerous Drug Distributor Inspection Report of Rite Aid Store #2394, Terminal Distributor No. 02-361100, dated November 6, 1996.
- (15) Exhibit 11--Ohio State Board of Pharmacy Prescription Room Barricade Inspection Report of Terminal Distributor License No. 02-361100 dated November 6, 1996.
- (16) Exhibit 12--Notification of Change of Responsible Person form of Rite Aid Pharmacy #2394, signed by Henry N. Hiner effective August 30, 1995.

Respondent's Exhibits:

- (1) Exhibit A--Copy of letter from Diane Pearson dated April 23, 1998.
- (2) Exhibit B--Letter from Robert B. Davis dated March 5, 1998.
- (3) Exhibit C--Letter from Chris McClain dated March 1, 1998.
- (4) Exhibit D--Letter from David G. Young dated March 23, 1998.
- (5) Exhibit E--Letter from Larry Grandy dated March 25, 1998.
- (6) Exhibit F--Copy of letter from Henry N. Hiner dated March 9, 1998

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Henry N. Hiner was originally licensed in the state of Ohio on August 28, 1961, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) Henry N. Hiner did, on or about August 28, 1996, misbrand and sell a drug that was misbranded, to wit: when presented a prescription for chlorpromazine 50mg, Henry N. Hiner dispensed chlorpropamide 250mg but labeled the vial as if chlorpromazine 50mg had been dispensed therein, causing serious, life-threatening physical harm to

the patient. Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.

- (3) Henry N. Hiner did, on or about November 6, 1996, while practicing pharmacy at Rite Aid in Crestline, Ohio, fail to provide personal supervision of the dangerous drugs, to wit: Henry N. Hiner left the pharmacy unattended by a pharmacist without locking the barricade, setting the alarm, or otherwise assuring the security and control for the dangerous drugs or adequate safeguards against diversion as required by Sections 4729.27 and 4729.55 of the Ohio Revised Code. Such conduct is in violation of Rules 4729-9-05 and 4729-9-11 of the Ohio Administrative Code.

CONCLUSION OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Sections 3715.52 to 3715.72 or Chapter 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 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Henry N. Hiner:

- (A) On the basis of paragraph (2) of the Findings of Fact and Conclusion of Law set forth above, the State Board of Pharmacy hereby reprimands Henry N. Hiner.
- (B) On the basis of paragraph (3) of the Findings of Fact and Conclusion of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of one hundred dollars (\$100.00) due and owing within thirty days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Lamping and approved (Aye-8/Nay-0). The Board then received reports regarding committee meetings held since the April Board meeting.

3:08 p.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in the matter of Sanford P. Horvat, R.Ph. pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code.

4:15 p.m.

Board member Joseph Maslak recused himself and left the meeting due to business matters.

4:49 p.m.

All evidence and testimony having been entered into the record, the hearing was concluded. Mrs. Plant moved that the Board go into Executive Session for the purpose of considering the evidence and testimony received in the matters of Isaac Blair, R.Ph. and Sanford P. Horvat, R.Ph. The motion was seconded by Mr. Lamping and a roll call vote was conducted by President Littlejohn as follows: Adelman-Yes, Cavendish-Yes, Hanna-Yes, Lamping-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

5:45 p.m.
RES. 98-195

The Executive Session was concluded and the meeting opened to the public. Mrs. Plant moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-971031-019)

In The Matter Of:

ISAAC BLAIR, R.Ph.
6809 Mayfield Road, Apt. 271
Mayfield Heights, Ohio 44124
(R.Ph. No. 03-2-21537)

INTRODUCTION

THE MATTER OF ISAAC BLAIR CAME TO HEARING ON MAY 4, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: AMONTE B. LITTLEJOHN, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; JOSEPH J. MASLAK, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

ISAAC BLAIR WAS REPRESENTED BY DAVID W. GRAUER, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Lynn Mudra, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Isaac Blair, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of six-page Notice of Opportunity for Hearing letter dated October 31, 1997.
- (2) Exhibit 1A--Copy of Hearing Request letter dated November 28, 1997.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated December 1, 1997.
- (4) Exhibit 1C--Notice of Appearance of Counsel in the Matter of Isaac Blair and Certificate of Service dated January 29, 1998.
- (5) Exhibit 1D--Request to Consolidate in the Matters of Joann P. Waltz Golden and Isaac Blair and Certificate of Service dated January 29, 1998.
- (6) Exhibit 1E--Copy of Pharmacist File Front Sheet of Isaac Blair showing original date of registration as February 26, 1996; and copy of Renewal Application for Pharmacist License, No. 03-2-21537, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Isaac Blair dated August 5, 1997.
- (7) Exhibit 1F--Copy of Hearing Schedule letter dated February 3, 1998.
- (8) Exhibit 1G--Copy of Hearing Schedule letter dated February 10, 1998.
- (9) Exhibit 2--Copy of RAP-St. Clair Ave. Customer History Report of Mary Adams dated from January 1, 1996, to June 25, 1997.
- (10) Exhibit 2(1)--Prescription number 0315638960.
- (11) Exhibit 2(2)--Prescription number 0315642614.
- (12) Exhibit 2(3)--Prescription number 0315644028.
- (13) Exhibit 3--Copy of RAP-St. Clair Ave. Customer History Report of Sabrina Adams dated from January 1, 1996, to June 25, 1997.

- (14) Exhibit 3(1)--Prescription number 0315638331.
- (15) Exhibit 4--Copy of RAP-St. Clair Ave. Customer History Report of Deborah Bishop dated from January 1, 1996, to June 25, 1997.
- (16) Exhibit 4(1)--Prescription number 0315642347.
- (17) Exhibit 5--RAP-St. Clair Ave. Customer History Report of Debbie Breeden dated from January 1, 1996, to June 25, 1997.
- (18) Exhibit 5(1)--Prescription number 26844.
- (19) Exhibit 6--RAP-St. Clair Ave. Customer History Report of Willieann Johnson dated from January 1, 1996, to June 25, 1997.
- (20) Exhibit 6(1)--Prescription number 35202.
- (21) Exhibit 7--Copy of three-page RAP-St. Clair Ave. Customer History Report of Frances M. Melton dated from January 1, 1996, to June 25, 1997.
- (22) Exhibit 7(1)--Prescription number 0315637933.
- (23) Exhibit 7(2)--Prescription number 0315641997.
- (24) Exhibit 7(3)--Prescription number 0315643247.
- (25) Exhibit 7(4)--Prescription number 0315644019.
- (26) Exhibit 8--Copy of RAP-St. Clair Ave. Customer History Report of Linda Miller dated from January 1, 1996, to June 25, 1997.
- (27) Exhibit 8(1)--Prescription number 0315648624.
- (28) Exhibit 9--RAP-St. Clair Ave. Customer History Report of Linda Nashe dated from January 1, 1996, to June 25, 1997; and RAP-St. Clair Avenue Customer History Report of Linda Nash dated from January 1, 1996, to June 25, 1997.
- (29) Exhibit 9(1)--Prescription number 0315643971.
- (30) Exhibit 10--Copy of RAP-St. Clair Ave. Customer History Report of Lori A. Mercurio dated from January 1, 1996, to June 25, 1997.
- (31) Exhibit 10(1)--Prescription number 30039.
- (32) Exhibit 11--Copy of RAP-St. Clair Ave. Customer History Report of Diane Robinson dated from January 1, 1996, to June 25, 1997.
- (33) Exhibit 11(1)--Prescription number 0315645135.
- (34) Exhibit 12--Copy of RAP-St. Clair Ave. Customer History Report of Yolanda C. Tucker dated from January 1, 1996, to June 25, 1997; and copy of RAP-St. Clair Ave. Customer History Report of Yolanda Tucker dated from January 1, 1996, to June 25, 1997.
- (35) Exhibit 12(1)--Prescription number 0315639363.
- (36) Exhibit 12(2)--Prescription number 0315640060.
- (37) Exhibit 12(3)--Prescription number 0315641240.
- (38) Exhibit 13--Copy of package insert for Adipex-P (phentermine HCl 37.5mg) manufactured by Gate Pharmaceuticals, Rev. C 3/94.
- (39) Exhibit 14--Copies of fourteen pages of pertinent articles of the Ohio State Board of Pharmacy News dated February, 1987; February, 1992; November 1995; and August, 1996, regarding controlled substances used for weight reduction; and copy of Ohio State Board of Pharmacy Compliance Bulletin 96-003 dated June 17, 1996.

Respondent's Exhibits:

- (1) Exhibit E--Letter from Vanessa L. Scott dated February 25, 1998.
- (2) Exhibit F--Copy of letter from John A. Petracci, not dated.
- (3) Exhibit G--Copy of letter from James E. Turner dated April 2, 1998.
- (4) Exhibit H--Copy of letter from James J. Graham dated February 27, 1998.
- (5) Exhibit I--Copy of letter from John F. Mingo dated April 5, 1998.
- (6) Exhibit J--Copy of letter from Yolanda Brooks, not dated.
- (7) Exhibit K--Copy of letter from Lauren Beach dated January 30, 1997.
- (8) Exhibit L--Two-page copy of East High School 1998 National Honor Society program showing Isaac Blair as Speaker dated Thursday, April 23, 1998.

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Isaac Blair was originally licensed in the state of Ohio on February 26, 1996, pursuant to examination, and is currently

licensed to practice pharmacy in the state of Ohio. Further, Isaac Blair is employed as a pharmacist at Rite Aid Discount Pharmacy #3156, 15105 St. Clair Avenue, Cleveland, Ohio.

- (2) Isaac Blair did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Isaac Blair sold 28 units of Adipex-P 37.5mg for diet to patient #1 pursuant to the following prescriptions which were not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, and thereby failing to fulfill his corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code:

<u>Rx Number</u>	<u>Written</u>	<u>Filled</u>
38960	12/04/96	12/01/96
42614	01/27/97	01/20/97

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

- (3) Isaac Blair did, on or about November 20, 1996, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Isaac Blair sold 28 units of Adipex-P 37.5mg for diet to patient #2 pursuant to prescription number 38331, written on November 21, 1996, not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, and thereby failing to fulfill his corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code. Such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (4) Isaac Blair did, on or about June 4, 1996, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Isaac Blair sold 28 units of Redux 15mg for diet to patient #4 pursuant to prescription number 26844, written on an unknown date, not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, and thereby failing to fulfill his corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code. Such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (5) Isaac Blair did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Isaac Blair sold 28 units of Adipex-P 37.5mg for diet to patient #6 pursuant to the following prescriptions which were not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, and thereby failing to fulfill his corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code:

<u>Rx Number</u>	<u>Written</u>	<u>Filled</u>
37933	04/18/96	11/15/96
41997	01/10/97	01/10/97
43247	01/24/97	01/28/97
44019	02/07/97	02/07/97

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

- (6) Isaac Blair did, on or about April 10, 1997, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Isaac Blair sold 14 units of Adipex-P 37.5mg for diet to patient #7 pursuant to prescription number 48624 which was not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, and thereby failing to fulfill his corresponding responsibility

pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code. Such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (7) Isaac Blair did, on or about July 25, 1996, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Isaac Blair sold 56 units of Didrex 50mg for diet to patient #9 pursuant to prescription number 30039 which was not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, and thereby failing to fulfill his corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code. Such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.
- (8) Isaac Blair did, on or about December 14, 1996, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Isaac Blair sold 28 units of Adipex-P 37.5mg for diet to patient #11 pursuant to prescription number 40060 which was not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, and thereby failing to fulfill his corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code. Such conduct is in violation of Section 2925.03(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 (8) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (8) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

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 Isaac Blair:

- (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 places the pharmacist identification card, No. 03-2-21537, of Isaac Blair on probation for two years, effective as of the date of the mailing of this Order. The terms of probation are as follows:
 - (1) Isaac Blair must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (2) Isaac Blair must abide by the rules of the Ohio State Board of Pharmacy.
 - (3) Isaac Blair must comply with the terms of this Order.

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.

- (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 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.

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mrs. Neuber and approved (Aye-4/Nay-3).

RES. 98-196 Mr. Lamping moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-980209-038)

In The Matter Of:

SANFORD P. HORVAT, R.Ph.

1288 Giesse Drive
Mayfield Heights, Ohio 44124
(R.Ph. No. 03-2-07604)

INTRODUCTION

THE MATTER OF SANFORD P. HORVAT CAME TO HEARING ON MAY 4, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: AMONTE B. LITTLEJOHN, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; JOSEPH J. MASLAK, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

SANFORD P. HORVAT WAS REPRESENTED BY DAVID W. GRAUER, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

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

Respondent's Witnesses:

- (1) Sanford P. Horvat, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of nine-page Notice of Opportunity for Hearing letter dated February 9, 1998.
- (2) Exhibit 1A--Notice of Appearance in the Matter of Sanford P. Horvat and Certificate of Service dated February 24, 1998; and Request for Hearing and Certificate of Service dated February 24, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated February 24, 1998.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated February 26, 1998.
- (5) Exhibit 1D--Copy of Pharmacist File Front Sheet of Sanford Phillip Horvat showing original date of registration as February 16, 1962; and two-page copy of Renewal Application for

Pharmacist License, No. 03-2-07604, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Sanford P. Horvat dated July 22, 1997.

- (6) Exhibit 2--Copy of RA Discount Pharmacy Customer History Report of Rose Alexander dated from January 1, 1996, to October 21, 1997.
- (7) Exhibit 2A--Prescription number 22268.
- (8) Exhibit 3--Copy of RA Discount Pharmacy Customer History Report of Janell Bannister dated from January 1, 1996, to October 21, 1997.
- (9) Exhibit 3A--Prescription number 34641.
- (10) Exhibit 4--Copy of RA Discount Pharmacy Customer History Report of Charlene Blair dated from January 1, 1996, to October 21, 1997.
- (11) Exhibit 4A--Prescription number 0301437425.
- (12) Exhibit 4B--Prescription number 03014900246.
- (13) Exhibit 4C--Prescription number 0301440167.
- (14) Exhibit 5--Copy of RA Discount Pharmacy Customer History Report of Gwendolyn Brown dated from January 1, 1996, to October 21, 1997.
- (15) Exhibit 5A--Prescription number 23349.
- (16) Exhibit 6--Copy of RA Discount Pharmacy Customer History Report of Margret Burkett dated from January 1, 1996, to October 21, 1997.
- (17) Exhibit 6A--Prescription number 19425.
- (18) Exhibit 7--Copy of RA Discount Pharmacy Customer History Report of Ann Marie Cigoi dated from January 1, 1996, to October 21, 1997.
- (19) Exhibit 7A--Prescription number 0301437865.
- (20) Exhibit 7B--Prescription number 0301438825.
- (21) Exhibit 7C--Prescription number 0301440338.
- (22) Exhibit 7D--Prescription number 0301441352.
- (23) Exhibit 8--Copy of RA Discount Pharmacy Customer History Report of Linda Dea dated from January 1, 1996, to October 21, 1997.
- (24) Exhibit 8A--Prescription number 22082.
- (25) Exhibit 9--Copy of RA Discount Pharmacy Customer History Report of Marilyn Harp dated from January 1, 1996, to October 21, 1997.
- (26) Exhibit 9A--Prescription number 0301440857.
- (27) Exhibit 10--Copy of RA Discount Pharmacy Customer History Report of Val Jackson dated from January 1, 1996, to October 21, 1997.
- (28) Exhibit 10A--Prescription number 32157.
- (29) Exhibit 10B--Prescription number 34957.
- (30) Exhibit 11--Copy of RA Discount Pharmacy Customer History Report of Diana A. Gornick dated from January 1, 1996, to October 21, 1997.
- (31) Exhibit 11A--Prescription number 23766.
- (32) Exhibit 11B--Prescription number 26853.
- (33) Exhibit 12--Copy of RA Discount Pharmacy Customer History Report of Antoinette McCall dated from January 1, 1996, to October 21, 1997.
- (34) Exhibit 12A--Prescription number 0301437726.
- (35) Exhibit 13--Copy of RA Discount Pharmacy Customer History Report of Pamela McDaniel dated from January 1, 1996, to October 21, 1997.
- (36) Exhibit 13A--Prescription number 27769.
- (37) Exhibit 13B--Prescription number 29839.
- (38) Exhibit 13C--Prescription number 31539.
- (39) Exhibit 13D--Prescription number 32506.
- (40) Exhibit 14--Copy of RA Discount Pharmacy Customer History Report of Beverly Novak dated from January 1, 1996, to October 21, 1997.
- (41) Exhibit 14A--Prescription number 23089.
- (42) Exhibit 14B--Prescription number 23975.
- (43) Exhibit 14C--Prescription number 26158.
- (44) Exhibit 14D--Prescription number 27638.
- (45) Exhibit 14E--Prescription number 28292.
- (46) Exhibit 15--Copy of RA Discount Pharmacy Customer History Report of Valerie O'Brien dated from January 1, 1996, to October 21, 1997.
- (47) Exhibit 15A--Prescription number 0301437418.
- (48) Exhibit 16--Copy of RA Discount Pharmacy Customer History Report of Mary Jane Shiever dated from January 1, 1996, to October 21, 1997.
- (49) Exhibit 16A--Prescription number 19711.
- (50) Exhibit 16B--Prescription number 20547.

- (51) Exhibit 16C--Prescription number 21167.
- (52) Exhibit 16D--Prescription number 29214.
- (53) Exhibit 16E--Prescription number 29928.
- (54) Exhibit 16F--Prescription number 32397.
- (55) Exhibit 16G--Prescription number 33122.
- (56) Exhibit 16H--Prescription number 33812.
- (57) Exhibit 16I--Prescription number 34658.
- (58) Exhibit 16J--Prescription number 0301435314.
- (59) Exhibit 16K--Prescription number 0301436008.
- (60) Exhibit 17--Copy of RA Discount Pharmacy Customer History Report of Ken Simon dated from January 1, 1996, to October 21, 1997.
- (61) Exhibit 17A--Prescription number 28970.
- (62) Exhibit 18--Copy of RA Discount Pharmacy Customer History Report of Denise Slomovitz dated from January 1, 1996, to October 21, 1997.
- (63) Exhibit 18A--Prescription number 32598.
- (64) Exhibit 18B--Prescription number 33693.
- (65) Exhibit 18C--Prescription number 34827.
- (66) Exhibit 18D--Prescription number 0301436398.
- (67) Exhibit 18E--Prescription number 0301437472.
- (68) Exhibit 19--Copy of RA Discount Pharmacy Customer History Report of Candy Stelmarski dated from January 1, 1996, to October 21, 1997.
- (69) Exhibit 19A--Prescription number 0301436785.
- (70) Exhibit 19B--Prescription number 0301439997.
- (71) Exhibit 20--Copy of RA Discount Pharmacy Customer History Report of Paula Spruill dated from January 1, 1996, to October 21, 1997.
- (72) Exhibit 20A--Prescription number 27372.
- (73) Exhibit 21--Copy of RA Discount Pharmacy Customer History Report of Elizabeth Stewart dated from January 1, 1996, to October 21, 1997.
- (74) Exhibit 21A--Prescription number 33179.
- (75) Exhibit 22--RA Discount Pharmacy Customer History Report of Faye Stewart dated from January 1, 1996, to October 21, 1997.
- (76) Exhibit 22A--Prescription number 28003.
- (77) Exhibit 23--Copy of package insert for Adipex-P (phentermine HCl 37.5mg) manufactured by Gate Pharmaceuticals, Rev. C 3/94.
- (78) Exhibit 24--Copies of fourteen pages of pertinent articles of the Ohio State Board of Pharmacy News dated February, 1987; February, 1992; November 1995; and August, 1996, regarding controlled substances used for weight reduction; and copy of Ohio State Board of Pharmacy Compliance Bulletin 96-003 dated June 17, 1996.
- (79) Exhibit 25--Copy of page 990 of the Physicians' Desk Reference.
- (80) Exhibit 26--Copy of page 1048 of the Physicians' Desk Reference.
- (81) Exhibit 27--Copy of pages 2607 and 2608 of the Physicians' Desk Reference.

Respondent's Exhibits:

- (1) Exhibit D--Letter from Leonard G. Katz dated April 28, 1998.
- (2) Exhibit E--Letter from Sanford J. Sherman dated April 29, 1998.
- (3) Exhibit F--Letter from Helen A. Lentz, not dated.
- (4) Exhibit G--Letter from Richard L. Fitch dated April 27, 1998.
- (5) Exhibit H--Letter from Jean Anne Chaney dated May 1, 1998.
- (6) Exhibit I--Letter from Paul J. Timco dated April 15, 1998.
- (7) Exhibit J--Letter from Reverend John D. Terzano dated April 30, 1998.

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Sanford P. Horvat was originally licensed in the state of Ohio on February 16, 1962, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that Sanford P. Horvat is the Responsible Pharmacist at Rite Aid Discount Pharmacy

#3014 pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.

- (2) Sanford P. Horvat did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Sanford P. Horvat sold 28 unit doses of Adipex-P 37.5mg for diet to patient #6 pursuant to the following prescriptions which were not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, and thereby failing to fulfill his corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code:

<u>Rx No.</u>	<u>Written</u>	<u>Filled</u>	<u>Drug</u>
37865	01/02/97	01/02/97	Adipex-P 37.5mg
38825	01/16/97	01/21/97	Adipex-P 37.5mg
40338	02/18/97	02/18/97	Adipex-P 37.5mg
41352	03/04/97	03/08/97	Adipex-P 37.5mg

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

- (3) Sanford P. Horvat did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Sanford P. Horvat sold 28 unit doses of Adipex-P 37.5mg for diet to patient #13 pursuant to the following prescriptions which were not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, and thereby failing to fulfill his corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code:

<u>Rx No.</u>	<u>Written</u>	<u>Filled</u>	<u>Drug</u>
23089	03/12/96	03/12/96	Adipex-P 37.5mg
23975	03/26/96	03/28/96	Adipex-P 37.5mg
26158	05/11/96	05/11/96	Adipex-P 37.5mg
27638	06/08/96	06/08/96	Adipex-P 37.5mg
28292	06/22/96	06/22/96	Adipex-P 37.5mg

Such conduct is in violation of Section 2925.03(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) and (3) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Sanford P. Horvat:

- (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 places the pharmacist identification card, No. 03-2-07604, of Sanford P. Horvat on probation for two years, effective as of the date of the mailing of this Order. The terms of probation are as follows:

- (1) Sanford P. Horvat must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (2) Sanford P. Horvat must abide by the rules of the Ohio State Board of Pharmacy.
- (3) Sanford P. Horvat must comply with the terms of this Order.

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.

- (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 imposes a monetary penalty of five hundred dollars (\$500.00) due and owing within thirty days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.

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

MOTION CARRIED.

SO ORDERED.

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

5:55 p.m. The Board recessed the meeting until Tuesday, May 5, 1998 at 8:00 a.m.

TUESDAY, MAY 5, 1998

8:20 a.m. ROLL CALL

The State Board of Pharmacy reconvened in Room 1914, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Amonte B. Littlejohn, R.Ph. (President); Joseph J. Maslak, R.Ph. (Vice-President); Diane Adelman, R.Ph.; Robert Cavendish, R.Ph.; John Hanna, R.Ph.; Paul Lamping, R.Ph.; Suzanne Neuber, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

The Board continued to receive committee reports and reports from staff.

8:30 a.m.

Mrs. Plant moved that the Board go into Executive Session for the purpose of conferring with the Assistant Attorney General regarding the investigation of charges and complaints against licensees and registrants. The motion was seconded by Mr. Cavendish and a roll call vote was conducted by President Littlejohn as follows: Adelman-Yes, Cavendish-Yes, Hanna-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

8:57 a.m.

RES. 98-197

The Executive Session was concluded and the meeting opened to the public. Mr. Lamping moved that the Board deny the proposed settlement in the matter of Jerry Starr, R.Ph. presented by the Assistant Attorney General during the Executive Session. The motion was seconded by Mr. Repke and approved (Aye-8/Nay-0).

The Board continued their review of staff reports and administrative matters not requiring official action.

RES. 98-198 Tim Benedict presented a request from Brad Roseborough, R.Ph. for Board approval to serve as the responsible pharmacist at the same time for two terminal distributor of dangerous drugs licenses. Following discussion, Mr. Cavendish moved that the Board approve Mr. Roseborough's request to serve as the responsible pharmacist for Medicine Shoppe (02-0376700) and a new pharmacy that has not yet been licensed as a terminal distributor of dangerous drugs. The motion was seconded by Mr. Lamping and approved (Aye-8/Nay-0).

RES. 98-199 The Board then reviewed a request from NCS HealthCare for confirmation that the procedure they have in place pursuant to Resolution 94-129 is still valid and acceptable. Following a review of the procedure and resolution, Mr. Cavendish moved that the Board reaffirm Resolution 94-129 as it exists. Mr. Lamping seconded the motion and it was approved (Aye-7/Nay-0/Recuse-1[Plant]).

RES. 98-200 The Board then reviewed the final draft of a cease and desist prepared by Board staff regarding RNA, Inc.'s "Data Polling Project". Mrs. Plant moved that the following Cease and Desist be issued by the Board:

CEASE AND DESIST

RNA, Incorporated
130 West Wenger Road
Englewood, Ohio 45322

Re: Confidential Information

To Whom It May Concern:

The Board has been apprised that RNA, Incorporated, has instituted a "Data Polling Project" which requests that participating pharmacies transmit confidential prescription information to the company. A copy of a "Customer Response Form" which alludes to the program is enclosed herewith.

You are hereby advised that Section 3719.13 of the Ohio Revised Code states as follows:

Prescriptions, orders, and records, required by Chapter 3719. of the Revised Code, and stocks of dangerous drugs and controlled substances, shall be open for inspection only to federal, state, county, and municipal officers, and employees of the state board of pharmacy whose duty it is to enforce the laws of this state or of the United States relating to controlled substances. Such prescriptions, orders, records, and stocks shall be open for inspection by employees of the state medical board for purposes of enforcing Chapter 4731. of the Revised Code. No person having knowledge of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party.

Further, Rule 4729-5-29 of the Ohio Administrative Code states in pertinent part as follows:

(A) Records of dispensing or administering of drugs are not a public record. A person having custody of, or access to, such records shall not divulge the contents thereof, or provide a copy thereof, to anyone except:

(1) The patient for whom the prescription or medication order was issued.

(2) The practitioner who issued the prescription or medication order.

(3) Certified/licensed health care personnel who are responsible for the care of the patient.

(4) A member, inspector, agent, or investigator of the board of pharmacy or any federal, state, county, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a specific investigation involving a designated person or drug.

(5) An agent of the state medical board when enforcing Chapter 4731. of the Revised Code.

(6) An agency of government charged with the responsibility of providing medical care for the patient upon a written request by an authorized representative of the agency requesting such information.

(7) An agent of a medical insurance company who provides prescription insurance coverage to the patient upon authorization and proof of insurance by the patient or proof of payment by the insurance company for those medications whose information is requested.

(8) Any person, other than those listed in paragraphs (A)(1) to (A)(6) of this rule, only when the patient has given consent for such disclosure in writing, except where a patient requiring medication is unable to deliver a written consent to the necessary disclosure. Any consent must be signed by the patient and dated. Any consent for disclosure is valid until rescinded by the patient. In an emergency, the pharmacist may disclose the prescription information when, in the professional judgment of the pharmacist, it is deemed to be in the best interest of the patient. A pharmacist making an oral disclosure in an emergency situation must prepare a written memorandum showing the patient's name, the date and time the disclosure was made, the nature of the emergency, and the names of the individuals by whom and to whom the information was disclosed.

(B) . . .

You are further advised that disseminating confidential information is a violation of Section 3719.13 of the Ohio Revised Code. Such is a misdemeanor of the third degree in the State of Ohio, punishable by a fine up to \$3,000.00 and incarceration up to 90 days. Entering into contracts with pharmacies to receive confidential information could be regarded as complicity to the dissemination of the information by those pharmacies. The State Board of Pharmacy regards the improper disclosure of confidential patient records as a serious offense, and will not hesitate to pursue violators.

Wherefore, RNA, Incorporated, is hereby notified to CEASE engaging in conduct which aids and abets the violation of Ohio's confidentiality statutes, and DESIST from any violations of Ohio law.

BY ORDER OF THE STATE BOARD OF PHARMACY

Mr. Lamping seconded the motion and it was approved (Aye-7/Nay-0/Abstain-1[Neuber]).

RES. 98-201 Staff then presented a copy of a contract that an Ohio pharmacy entered into with ScriptLINE, Inc., a Nevada corporation with its principal office located at 2030 East Flamingo Road, Paradise Valley, Nevada. The contract provides that the pharmacy's dispensing data is jointly owned by the pharmacy and the ScriptLINE corporation and that the corporation may use such data in any manner deemed appropriate. Following discussion, Mrs. Plant moved that the following Cease and Desist be issued:

CEASE AND DESIST

ScriptLINE, Inc.
Jim Martin, General Manager
2030 East Flamingo Road, Suite 260
Paradise Valley, Nevada 89119

Re: Confidentiality

Dear Mr. Martin:

The Board has been apprised that ScriptLINE, Inc., has entered into agreements with certain Ohio pharmacies through a "Participating Pharmacy Agreement" which requests that the pharmacies transmit confidential prescription information to the company. A copy of one such agreement is enclosed herewith.

Of particular concern to the Board are paragraphs numbered "5" and "6," respectively. Specifically, your contract indicates that ScriptLINE shall have "joint and individual ownership of the Dispensing Data and each may use the Dispensing Data in any manner . . ." Further, the document provides that "ScriptLINE may provide information or Dispensing Data it receives pursuant to this Agreement . . . to third parties interested in such information." Even though your agreement indicates that ScriptLINE and the participating pharmacy shall each abide by applicable laws safeguarding the confidentiality of the information, this terminology is merely "lip service" to the true confidentiality of the patients. Since Ohio law clearly provides that a pharmacy may not share this information with your company, when it is so shared, there is no meaning to this language.

You are hereby advised that Section 3719.13 of the Ohio Revised Code states as follows:

Prescriptions, orders, and records, required by Chapter 3719. of the Revised Code, and stocks of dangerous drugs and controlled substances, shall be open for inspection only to federal, state, county, and municipal officers, and employees of the state board of pharmacy whose duty it is to enforce the laws of this state or of the United States relating to controlled substances. Such prescriptions, orders, records, and stocks shall be open for inspection by employees of the state medical board for purposes of enforcing Chapter 4731. of the Revised Code. No person having knowledge of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party.

Further, Rule 4729-5-29 of the Ohio Administrative Code states in pertinent part as follows:

(A) Records of dispensing or administering of drugs are not a public record. A person having custody of, or access to, such records shall not divulge the contents thereof, or provide a copy thereof, to anyone except:

- (1) The patient for whom the prescription or medication order was issued.
- (2) The practitioner who issued the prescription or medication order.
- (3) Certified/licensed health care personnel who are responsible for the care of the patient.
- (4) A member, inspector, agent, or investigator of the board of pharmacy or any federal, state, county, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a specific investigation involving a designated person or drug.
- (5) An agent of the state medical board when enforcing Chapter 4731. of the Revised Code.
- (6) An agency of government charged with the responsibility of providing medical care for the patient upon a written request by an authorized representative of the agency requesting such information.

(7) An agent of a medical insurance company who provides prescription insurance coverage to the patient upon authorization and proof of insurance by the patient or proof of payment by the insurance company for those medications whose information is requested.

(8) Any person, other than those listed in paragraphs (A)(1) to (A)(6) of this rule, only when the patient has given consent for such disclosure in writing, except where a patient requiring medication is unable to deliver a written consent to the necessary disclosure. Any consent must be signed by the patient and dated. Any consent for disclosure is valid until rescinded by the patient. In an emergency, the pharmacist may disclose the prescription information when, in the professional judgment of the pharmacist, it is deemed to be in the best interest of the patient. A pharmacist making an oral disclosure in an emergency situation must prepare a written memorandum showing the patient's name, the date and time the disclosure was made, the nature of the emergency, and the names of the individuals by whom and to whom the information was disclosed.

(B) . . .

You are further advised that disseminating confidential information is a violation of Section 3719.13 of the Ohio Revised Code. Such is a misdemeanor of the third degree in the State of Ohio, punishable by a fine up to \$2,000.00 and incarceration up to 30 days. Entering into contracts with pharmacies to receive confidential information could be regarded as complicity to the dissemination of the information by those pharmacies. The State Board of Pharmacy regards the improper disclosure of confidential patient records as a serious offense, and will not hesitate to pursue violators.

Wherefore, ScriptLINE, Inc., is hereby notified to CEASE engaging in conduct which aids and abets the violation of Ohio's confidentiality statutes and DESIST from any violations of Ohio law. Further, ScriptLINE, Inc. should notify all terminal distributors licensed with the Ohio Board who have entered into a contract that they are in violation of these confidentiality statutes.

BY ORDER OF THE OHIO STATE BOARD OF PHARMACY

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

9:45 a.m.

The meeting was recessed for thirty minutes.

10:13 a.m.

The Board reconvened with all members present except for Mr. Maslak.

RES. 98-202

Staff reported that the following settlements had been entered into by the Board in the following matters:

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-980209-035)

In The Matter Of:

THOMAS EDWARD ALBERT, R.Ph.
9423 Gettysburg
Twinsburg, Ohio 44087
(R.Ph. No. 03-3-16900)

This Settlement Agreement is entered into by and between Thomas Edward Albert and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Thomas Edward Albert 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.

Thomas Edward Albert 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 Thomas Edward Albert'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) Thomas Edward Albert 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 Thomas Edward Albert was originally licensed in the state of Ohio on August 3, 1987, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that Thomas Edward Albert is the Responsible Pharmacist at Parkway Pharmacy, Inc., 3609 Park East, Beachwood, Ohio pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
 - (2) Thomas Edward Albert did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Thomas Edward Albert sold 28 units of Phentermine HCl 37.5mg for diet to the same patient pursuant to the following prescriptions which were not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, and thereby failing to fulfill his corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code:

<u>Rx No.</u>	<u>Written</u>	<u>Filled</u>	<u>Drug</u>	<u>Doctor</u>
572217	01/02/95	01/08/96	Phentermine 37.5mg	Wehrum
575322	01/30/96	02/10/96	Phentermine 37.5mg	Wehrum
576735	02/13/96	02/24/96	Phentermine 37.5mg	Wehrum
578194	02/27/96	03/09/96	Phentermine 37.5mg	Wehrum
581165	03/12/96	04/09/96	Phentermine 37.5mg	Wehrum
582356	04/06/96	04/22/96	Phentermine 37.5mg	Wehrum
583765	04/23/96	05/07/96	Phentermine 37.5mg	Wehrum
586562	06/04/96	06/07/96	Adipex-P 37.5mg	Wehrum
587924	06/24/96	06/24/96	Adipex-P 37.5mg	Wehrum
590700	07/19/96	07/26/96	Adipex-P 37.5mg	Wehrum
579755	03/26/96	03/25/96	Phentermine 37.5mg	Wehrum

Such conduct is in violation of Section 2925.03(A) 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, Thomas Edward Albert knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Thomas Edward Albert's pharmacist identification card, No. 03-3-16900, will be placed on probation for six months, as of the effective date of this agreement. The terms of probation are as follows:
 - (1) Thomas Edward Albert must not violate the drug laws of the state of Ohio, any other state, or the federal government.

- (2) Thomas Edward Albert must abide by the rules of the Ohio State Board of Pharmacy.
- (3) Thomas Edward Albert must comply with the terms of this Agreement.

For cause, the Board may at any time revoke probation, 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.

- (B) Thomas Edward Albert agrees to the imposition of a monetary penalty of one thousand dollars (\$1,000.00) due and owing within thirty days from the effective date of the agreement. Check of money order 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.

Thomas Edward Albert 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 shall revoke probation for any violation of the terms of this Agreement occurring during the probation period.

If, in the judgment of the Board, Thomas Edward Albert 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.

Thomas Edward Albert acknowledges that he has had an opportunity to ask questions concerning the terms of this agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Thomas Edward Albert waives any and all claims or causes of action he may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. Thomas Edward Albert waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

In the event the Board, in its discretion, does not adopt this Agreement as its Adjudication, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. Thomas Edward Albert 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.

<i>/s/ Thomas Edward Albert</i>	<i>/d/ 4/24/98</i>
Thomas Edward Albert, Respondent	Date of Signature
<i>/s/ Paul A Lang</i>	<i>/d/ 4/24/98</i>
Paul A. Lang, Attorney for Respondent	Date of Signature
<i>/s/ Amonte B. Littlejohn</i>	<i>/d/ 5/4/98</i>
Amonte B. Littlejohn, President, Ohio State Board of Pharmacy	Date of Signature
<i>/s/ Sally Ann Steuk</i>	<i>/d/ 5/4/98</i>
Sally Ann Steuk, Ohio Assistant Attorney General	Date of Signature

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-980414-055)

In The Matter Of:

RONALD JAMES MARINELLI, JR.
3303 Dandelion Drive
Columbus, Ohio 43231
(Pharmacy Intern No. 06-0-00488)

This Settlement Agreement is entered into by and between Ronald James Marinelli, Jr. 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. Ronald James Marinelli, Jr. 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 formal disciplinary proceedings on the issues contained herein.

Ronald James Marinelli, Jr. is knowingly and voluntarily acknowledging that, in order to settle potential disciplinary charges against him and in order to obviate the need to conduct an administrative hearing to consider possible disciplinary sanctions against Ronald James Marinelli, Jr.'s license to practice pharmacy as an intern 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) Ronald James Marinelli, Jr. neither admits nor denies the allegations stated below; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same:
 - (1) Records of the Board of Pharmacy indicate that Ronald James Marinelli, Jr. was originally registered as a pharmacy intern in the state of Ohio on October 24, 1997.
 - (2) Ronald James Marinelli, Jr. did, on or about February 12, 1998, in an interview with Board agents, admit that he is an alcoholic, having been arrested four times for driving under the influence of alcohol; two were convictions, one was a dismissal on technical grounds, and one being yet unresolved. Such conduct indicates that Ronald James Marinelli, Jr. is addicted to or abusing liquor or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy within the meaning of Section 4729.16(A)(3) of the Ohio Revised Code.
 - (3) Ronald James Marinelli, Jr. did, on or about August 19, 1996, knowingly obtain, possess, or use a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Ronald James Marinelli, Jr. possessed Vicodin ES, a schedule III controlled substance, without a prescription. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
 - (4) Ronald James Marinelli, Jr. did, on or about August 19, 1996, possess a dangerous drug when not in accordance with Chapter 4729. and 4731. of the Ohio Revised Code, to wit: Ronald James Marinelli, Jr. possessed Naprosen 550mg tablets and Humibid L. A. 600mg tablets. Such conduct is in violation of Section 4729.51(C)(3) of the Ohio Revised Code.
 - (5) Ronald James Marinelli, Jr. did, between January 5, 1998, and January 31, 1998, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Riverside Methodist Hospital, Columbus,

Ohio, beyond the express or implied consent of the owner, to wit: Ronald James Marinelli, Jr. admittedly stole 4 tablets of Lortab 5/500, a schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (6) Ronald James Marinelli, Jr. did, on or about October 17, 1997, knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when the statement was made with purpose to secure the issuance by a governmental agency of a license, permit, authorization, certificate, or registration, to wit: Ronald James Marinelli, Jr. falsified his application for pharmacy intern registration by indicating that he had never been charged with any criminal violations when he had in fact been criminally charged with a criminal drug possession offense and operating a motor vehicle under the influence of alcohol and/or drugs. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of formal disciplinary proceedings at this time, Ronald James Marinelli, Jr. knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Ronald James Marinelli, Jr. stipulates that he no longer wishes to pursue a career as a pharmacist.
- (B) Ronald James Marinelli, Jr. agrees to the revocation of his license to practice pharmacy as an intern in the state of Ohio. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Ronald James Marinelli, Jr. may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs.
- (C) 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 notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

Ronald James Marinelli, Jr. 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.

Ronald James Marinelli, Jr. 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. Ronald James Marinelli, Jr. 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/ Ronald James Marinelli Jr.
Ronald James Marinelli, Jr., Respondent

/d/ 4/24/98
Date of Signature

/s/ Jeffrey R. Kaufman
Jeffrey R. Kaufman, Attorney for Respondent

/d/ 4-27-98
Date of Signature

/s/ Amonte B. Littlejohn
Amonte B. Littlejohn, President, Ohio State Board of Pharmacy

/d/ 5/4/98
Date of Signature

/s/ Sally Ann Steuk
Sally Ann Steuk, Ohio Assistant Attorney General

/d/ 5/4/98
Date of Signature

10:17 a.m.

RES. 98-203

Mr. Maslak returned and Mrs. Adelman reported on the progress of the 1998 Ad Hoc Advisory Committee on Rule Review and its April 15, 1998 meeting. Mr. Benedict and Mr. Maslak reported on the 34 pharmacists who are on probation pursuant to Orders of the Board. Following discussion, the Board directed staff to issue notices of opportunity for a hearing to Michael Grothaus and Lisa Ramirez due to non-compliance with the Board's Order.

Mr. Benedict reported on the Medical Board's progress in amending the rules regarding weight loss programs and adopting new rules regarding pain management. Mr. Benedict also discussed the third quarter report regarding the activities of the field staff.

Mr. Cavendish reported on the accreditation visit to Ohio State University's College of Pharmacy by the American Council on Pharmaceutical Education (ACPE) April 20-22, 1998. Mr. Hanna reported on the accreditation visit to Ohio Northern University's College of Pharmacy April 22-24, 1998. Formal written reports of the findings of the accreditation visits will be forwarded to the Board by ACPE in July, 1998.

Mr. Lamping moved that the Minutes of the April 6, 7, 8, 1998 meeting be approved. The motion was seconded by Mrs. Neuber and approved (Aye-8/Nay-0).

11:18 a.m.

Mr. Maslak left for personal reasons and the Licensing Administrator, William McMillen, joined the Board for the purpose of responding to questions regarding the Licensing Division's activities since the last Board meeting and the written report that was distributed to Board members on Monday morning.

The Board then reviewed proposed language for use in drafting orders regarding impaired licensees and registrants. Following discussion, Mrs. Plant moved that the language be approved as drafted and included in orders of the Board when appropriate. The motion was seconded by Mr. Cavendish and approved (Aye-7/Nay-0).

11:24 a.m.

Mr. Maslak returned and joined the meeting. The Board continued to review agenda items not requiring formal action by the Board.

11:35 a.m.

The Board recessed for lunch.

1:00 p.m.

The following members of the State Board of Pharmacy reconvened in Room 1922, 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: Amonte B. Littlejohn, R.Ph. (President); Joseph J. Maslak, R.Ph. (Vice-President); Diane Adelman, R.Ph.; Robert Cavendish, R.Ph.; Paul Lamping, R.Ph.; Suzanne Neuber, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

BROWNING, SHANNON L.	03-1-22917	WEST VIRGINIA
CULBERTSON, JULIA LOUISE	03-1-22964	TENNESSEE
HUBERT, WILLIAM J.	03-1-22920	ARIZONA
KNAPP, DARLENE K.	03-1-22900	ARIZONA
SIEMER, RONALD P.	03-1-22918	INDIANA

1:20 p.m.

RES. 98-204

Mr. Lamping moved that the candidates be approved and their licenses to practice pharmacy in Ohio be issued. The motion was seconded by Mr. Repke and approved (Aye-7/Nay-0).

1:30 p.m.

The Board members, except Mr. Cavendish and Mr. Hanna, reconvened and were joined by the Executive Director, Assistant Executive Director, and Compliance Administrator in Room 1919 for the purpose of meeting with the Directors of Pharmacy Operations for corporations operating pharmacies in Ohio. The meeting was attended by the following:

Acme Pharmacies- Akron, Ohio
Joe Lahovich, Director
Charles J. Weiss, Supervisor

CVS Pharmacy, Inc. - Woonsocket, Rhode Island
Carlos Ortiz, Director of Legislative and Government Affairs
Mary Ellen O'Brien, Contract Compliance Manager
John Ahler, Pharmacy Supervisor
Bob Reeves, Pharmacy Supervisor
Steve Heidenthal, Region Manager

Discount Drug Mart, Inc. - Medina, Ohio
Forest B. Stoudt, Vice President of Pharmacy Operations

Drug Emporium - Powell, Ohio
Matthew E. Erick, District Pharmacy Supervisor

Eckard Drug Co. - Pittsburgh, Pennsylvania
Walt Cmiel, Premiere Floater

Fruth Pharmacy - Point Pleasant, W. Va.
Laddie Burdette, Vice-President

The Kroger Company - Cincinnati, Ohio
William F. Sheridan, II, Pharmacy Merchandiser

Lucas Pharmacies, Inc. - Columbus, Ohio
Dale Lucas, President

Marc Glassman, Inc. - Cleveland, Ohio
Bill Davis, V.P. Pharmacy Operations
Laurie Loria, Pharmacy Supervisor
Dave Florman, 3rd Party Coordinator

Meijer, Inc. - Grand Rapids, Michigan
Bob Wagonblott, Pharmacy Specialist

Rite Aid Corporation - Harrisburg, Pennsylvania
August J. Dobish, Manager - Government & Trade Relations
James E. Krahulec, V.P. Government & Trade Relations
Steve Landerman, Ohio Facilitator - Lobbyist

Seaway Food Town, Inc. - Maumee, Ohio
Kay Neher, Pharmacy Coordinator
Don Rettig, Director of Pharmacy

Thriftway Food & Drug, Winn-Dixie - Louisville, Kentucky
Len Stallo, Pharmacy Sales Coordinator

Walgreens - Dearfield, Illinois
Larry Kligenbeck, Pharmacy Supervisor
Nick Barson, Pharmacy Supervisor
Chris Oravetz, Pharmacy Supervisor

Wal-Mart Pharmacy - Bentonville, Arkansas
George Chapman - Pharmacy District Manager
Bob Dufour, Director of Professional Services

Also attending was Steve Mueller, Director of Pharmacy Affairs for the Ohio Pharmacists Association. The 1998 Annual Report was distributed to attendees and discussed by the Executive Director. Agenda items discussed during the meeting included "central fill concepts", imaging of prescriptions, Am. Sub. S.B. 66, theft of drug reports, the top five "pink sheet" violations, workload concerns, patient counseling and prospective drug utilization review, confidentiality of patient prescription records, "true" informed consent, patient compliance programs versus marketing programs, therapeutic switch programs and PBM's, integrity of computerized pharmacy records, false labels, partial fills, fraud, false DEA numbers, and the requirement that the full name of a prescriber's agent be recorded on oral prescription records.

3:16 p.m. The meeting was concluded and the Board recessed until 9:00 a.m., Wednesday, May 6, 1998.

WEDNESDAY, MAY 6, 1998

9:15 a.m. ROLL CALL

The following members of the State Board of Pharmacy reconvened in Room 1914, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Amonte B. Littlejohn, R.Ph. (President); Joseph J. Maslak, R.Ph. (Vice-President); Diane Adelman, R.Ph.; Robert Cavendish, R.Ph.; Paul Lamping, R.Ph.; Suzanne Neuber, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

Matters appearing on the agenda not requiring official action by the Board were discussed.

9:30 a.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing pursuant to Ohio Revised Code Chapters 119. and 4729. in the matter of Harold Robert Peters, R.Ph.; Mayfield Heights.

9:50 a.m.

Board member Mr. Hanna arrived and joined the meeting.

1:07 p.m.

All evidence and testimony having been entered into the record, the hearing was concluded and the record closed. The Board recessed for five minutes.

1:20 p.m.

Mrs. Plant moved that the Board go into Executive Session for the purpose of considering the evidence and testimony received in the hearing. The motion was seconded by Mr. Lamping and a roll call vote was conducted by President Littlejohn as follows: Adelman-Yes, Cavendish-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes. Mr. Hanna did not vote nor participate in the deliberations in this matter since he did not arrive until after the hearing had commenced.

RES. 98-205 The Executive Session was concluded and the meeting opened to the public. Mr. Lamping moved that the Board adopt the following order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-980402-052)

In The Matter Of:

HAROLD ROBERT PETERS, R.Ph.
7652 Saratoga Road
Middleburg Heights, Ohio 44130
(R.Ph. No. 03-2-16710)

INTRODUCTION

THE MATTER OF HAROLD ROBERT PETERS CAME TO HEARING ON MAY 6, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: AMONTE B. LITTLEJOHN, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; JOSEPH J. MASLAK, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

HAROLD ROBERT PETERS WAS REPRESENTED BY DOMINIC VANNUCCI, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) James Reye, Ohio State Board of Pharmacy
- (2) Richard Rob, Consultant for Health Care Fraud (formerly with Blue Cross & Blue Shield)

Respondent's Witnesses:

- (1) Harold Robert Peters, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of seven-page Summary Suspension Order/Notice of Opportunity for Hearing letter dated April 2, 1998.
- (2) Exhibit 1A--Certified copy of Journal Entry in the Court of Common Pleas, Cuyahoga County, Case No. CR 356362, State of Ohio vs. Harold Peters dated March 13, 1998.
- (3) Exhibit 1B--Hearing Request letter dated April 17, 1998.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated April 21, 1998.
- (5) Exhibit 1D--Copy of Pharmacist File Front Sheet of Harold Peters showing original date of registration as March 6, 1987; and two-page copy of Renewal Application for Pharmacist License, No. 03-2-16710, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Harold Robert Peters dated July 24, 1997.
- (6) Exhibit 2--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 1287043499 with attached copy of fourteen Fox Discount Drugs prescription labels.
- (7) Exhibit 3--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 1310035528 with attached copy of fifteen Fox Discount Drugs prescription labels.
- (8) Exhibit 4--Two-page copy of Blue Cross Blue Shield of Ohio Claim Form No. 1337039141 with attached copies of twenty-two Medic Discount Drugstores prescription labels.
- (9) Exhibit 5--Two-page copy of Blue Cross Blue Shield of Ohio Claim Form No. 2009033880 with attached copies of twenty-two Medic Discount Drugstores prescription labels.
- (10) Exhibit 6--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 2031036103 with attached copy of Medic Discount Drug #560 Tax Insurance Summary of Harold R. Peters dated from January 1, 1992, through January 23, 1992.
- (11) Exhibit 7--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 2045037540 with the following attachments: copy of Medic Discount Drug #560 Tax Insurance Summary of Harold R. Peters dated from November 11, 1991, through November 11, 1991, and copy of Medic Discount Drug #560 Tax Insurance Summary of Harold R. Peters dated from December 31, 1991, through December 31, 1991.
- (12) Exhibit 8--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 2071036201 with attached copy of Medic Discount Drug #560 Tax Insurance Summary of Harold R. Peters dated from January 23, 1992, through January 31, 1992.
- (13) Exhibit 9--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 2079038172 with attached copy of Medic Discount Drug #560 Tax Insurance Summary of Harold R. Peters dated from February 1, 1992, through February 7, 1992.

- (14) Exhibit 10--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 2114039133 with attached copy of Medic Discount Drug #560 Tax Insurance Summary of Harold R. Peters dated from February 15, 1992, through February 16, 1992.
- (15) Exhibit 11--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 2226041926 with attached copy of Medic Discount Drug #560 Tax Insurance Summary of Harold R. Peters dated from February 20, 1992, through February 20, 1992.
- (16) Exhibit 12--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 2366035581 with attached copy of Medic Discount Drug #560 Tax Insurance Summary of Harold R. Peters dated from February 23, 1992, through February 23, 1992.
- (17) Exhibit 13--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 4140039581 with attached copies of two Parma-Ridge Pharmacy receipts.
- (18) Exhibit 14--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 4307031875 with attached copy of one Parma-Ridge Pharmacy receipt.
- (19) Exhibit 15--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5034036394 with attached copy of one Parma-Ridge Pharmacy receipt.
- (20) Exhibit 16--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5072047022 with attached copy of two Parma-Ridge Pharmacy receipts.
- (21) Exhibit 17--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5101033123 with attached copies of three Parma-Ridge Pharmacy receipts.
- (22) Exhibit 18--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5121052455 with attached copies of two Parma-Ridge Pharmacy receipts.
- (23) Exhibit 19--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5144036331 with attached copies of three Parma-Ridge Pharmacy receipts.
- (24) Exhibit 20--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5158051569 with attached copies of four Parma-Ridge Pharmacy receipts.
- (25) Exhibit 21--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5171051132 with attached copies of four Parma-Ridge Pharmacy receipts.
- (26) Exhibit 22--Two-page copy of Blue Cross Blue Shield of Ohio Claim Form No. 5174031895 with attached copies of four Parma-Ridge Pharmacy receipts.
- (27) Exhibit 23--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 4032034401 with attached copies of two Parma-Ridge Pharmacy receipts.
- (28) Exhibit 24--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5184049243 with attached copies of four Parma-Ridge Pharmacy receipts.
- (29) Exhibit 25--Two-page copy of Blue Cross Blue Shield of Ohio Claim Form No. 5198035382 with attached copy of four Parma-Ridge Pharmacy receipts.
- (30) Exhibit 26--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5207033594 with attached copy of Blue Cross Blue Shield of Ohio Explanation of Benefits of Harold Peters for claims paid on check number 4251672; and five Parma-Ridge Pharmacy receipts.
- (31) Exhibit 27--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5219043427 with attached copies of four Parma-Ridge Pharmacy receipts.
- (32) Exhibit 28--Two-page copy of Blue Cross Blue Shield of Ohio Claim Form No. 5230037344 with attached copies of four Parma-Ridge Pharmacy receipts.
- (33) Exhibit 29--Two-page copy of Blue Cross Blue Shield of Ohio Claim Form No. 5241035028 with attached copies of four Parma-Ridge Pharmacy receipts.
- (34) Exhibit 30--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5254052517 with attached copies of four Parma-Ridge Pharmacy receipts.
- (35) Exhibit 31--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5270035549 with attached copies of four Parma-Ridge Pharmacy receipts.
- (36) Exhibit 32--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5283031801 with attached copies of four Parma-Ridge Pharmacy receipts.
- (37) Exhibit 33--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5293042055 with attached copies of four Parma-Ridge Pharmacy receipts.
- (38) Exhibit 34--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5304034289 with attached copies of four Parma-Ridge Pharmacy receipts.
- (39) Exhibit 35--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5318540168 with attached copies of four Parma-Ridge Pharmacy receipts.
- (40) Exhibit 36--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5338551514 with attached copies of four Parma-Ridge Pharmacy receipts.
- (41) Exhibit 37--Two-page copy of Blue Cross Blue Shield of Ohio Claim Form No. 6004540927 with attached copies of seven Parma-Ridge Pharmacy receipts.
- (42) Exhibit 38--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 4290038860 with attached copy of Parma-Ridge Pharmacy receipt.

- (43) Exhibit 39--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5024032082 with attached copy of Parma-Ridge Pharmacy receipt.
- (44) Exhibit 40--Two-page copy of Blue Cross Blue Shield of Ohio Claim Form No. 5198043585 with attached copies of four Parma-Ridge Pharmacy receipts.
- (45) Exhibit 41--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5255034046 with attached copies of two Parma-Ridge Pharmacy receipts.
- (46) Exhibit 42--Two-page copy of Blue Cross Blue Shield of Ohio Claim Form No. 5342546787 with attached copies of three Parma-Ridge Pharmacy receipts.
- (47) Exhibit 43--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 6004541111 with attached copy of Parma-Ridge Pharmacy receipt.
- (48) Exhibit 44--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 6012543680 with attached copies of three Parma-Ridge Pharmacy receipts.
- (49) Exhibit 45--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5296043919 with attached copies of four Parma-Ridge Pharmacy receipts.
- (50) Exhibit 46--Two-page copy of Blue Cross Blue Shield of Ohio Claim Form No. 5314036157 with attached copies of four Parma-Ridge Pharmacy receipts.
- (51) Exhibit 47--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5345548632 with attached copies of three Parma-Ridge Pharmacy receipts.
- (52) Exhibit 48--Copy of Blue Cross Blue Shield of Ohio Claim Form No. 5363541665 with attached copies of two Parma-Ridge Pharmacy receipts.
- (53) Exhibit 49--Copy of sixty-seven-page Blue Cross & Blue Shield of Ohio Financial Investigations Department report of Peters dated February 28, 1996.
- (54) Exhibit 50--Copy of Third Federal Savings Official Check, No. 61-317778409-8, for \$97,000.00 payable to Blue Cross Blue Shield of Ohio dated March 8, 1996; copy of Dollar Bank Cashiers Check, No. 01061105, for \$79,500.00 payable to Blue Cross Blue Shield of Ohio dated March 8, 1996, copy of Star Bank Cashier's Check, No. 242969, for \$45,100.00 payable to Blue Cross Blue Shield of Ohio dated March 8, 1996; copy of Strongsville Savings Bank Official Check, No. 158008, for \$37,400 payable to Blue Cross Blue Shield of Ohio dated March 8, 1996; and copy of Third Federal Savings Official Check, No. 61-317778410-7, for \$17,564.36 payable to Blue Cross Blue Shield of Ohio dated March 8, 1996.
- (55) Exhibit 51--Two-page Financial Investigations Case Overview of Harold Peters signed by Kathy A. Shortridge and Greg Beck dated November 30, 1995, with the following attachment: copy of four-page Community Choice Application Insurance for One signed by Harold R. Peters and Connie A. Peters on March 23, 1995.
- (56) Exhibit 52--Prescription number 6629748.
- (57) Exhibit 53--Prescription number 8800368.
- (58) Exhibit 54--Prescription number 6629859.
- (59) Exhibit 55--Prescriptions numbered 6630012 and 6630013.
- (60) Exhibit 56--Prescriptions numbered 6630193, 6630194, and 6630195.
- (61) Exhibit 57--Prescription number 6631586.
- (62) Exhibit 58--Prescription number 6631733.
- (63) Exhibit 59--Prescription number 6632433.
- (64) Exhibit 60--Prescription number 6632434.
- (65) Exhibit 61--Prescription number 6632445.
- (66) Exhibit 62--Prescription number 6632446.
- (67) Exhibit 63--Prescription number 6632450.
- (68) Exhibit 64--Prescriptions numbered 6632460 and 6632461.
- (69) Exhibit 65--Prescription number 6632817.
- (70) Exhibit 66--Prescription number 6633331.
- (71) Exhibit 67--Prescriptions numbered 6633330 and 6633329.
- (72) Exhibit 68--Prescription number 6633810.
- (73) Exhibit 69--Prescriptions numbered 6634305 and 6634304.
- (74) Exhibit 70--Prescriptions numbered 6634331 and 6634332.
- (75) Exhibit 71--Prescription number 6634389.
- (76) Exhibit 72--Prescription number 6634466.
- (77) Exhibit 73--Prescriptions numbered 6634458 and 6634459.
- (78) Exhibit 74--Prescriptions numbered 6634574 and 6634575.
- (79) Exhibit 75--Prescription number 6634687.
- (80) Exhibit 76--Prescription number 6634727.
- (81) Exhibit 77--Prescription number 6634723.
- (82) Exhibit 78--Prescription number 6634721.

- (83) Exhibit 80--Prescription number 6635463.
- (84) Exhibit 81--Prescription number 6635754.
- (85) Exhibit 82--Prescription number 6635884.
- (86) Exhibit 83--Prescription number 6635885.
- (87) Exhibit 84--Prescription number 6636043.
- (88) Exhibit 86--Prescription number 6636445.
- (89) Exhibit 87--Prescription number 6636488.
- (90) Exhibit 88--Prescription number 6636984.
- (91) Exhibit 89--Prescription number 6637486.
- (92) Exhibit 90--Prescription number 6639256.
- (93) Exhibit 91--Prescription number 6641788.
- (94) Exhibit 92--Prescription number 6641891.
- (95) Exhibit 93--Prescription number 6641863.
- (96) Exhibit 94--Prescription number 6641877.
- (97) Exhibit 95--Prescription number 6642142.
- (98) Exhibit 96--Prescription number 6642166.
- (99) Exhibit 97--Prescription number 6642174.
- (100) Exhibit 98--Prescription number 6642283.
- (101) Exhibit 99--Prescription number 6642459.
- (102) Exhibit 100--Prescriptions numbered 6642693 and 6642694.
- (103) Exhibit 101--Prescription number 6642783.
- (104) Exhibit 102--Prescription number 6642925.
- (105) Exhibit 103--Prescription number 6642936.
- (106) Exhibit 104--Prescription number 6643140.
- (107) Exhibit 105--Prescription number 6642926.
- (108) Exhibit 106--Prescriptions numbered 6643120 and 6643119.
- (109) Exhibit 107--Prescription number 6643123.
- (110) Exhibit 108--Prescriptions numbered 6643121 and 6643122.
- (111) Exhibit 109--Prescription number 6643171.
- (112) Exhibit 110--Prescription number 6643124.
- (113) Exhibit 111--Prescription number 6643125.
- (114) Exhibit 112--Prescription number 6643392.
- (115) Exhibit 113--Prescription number 6643812.
- (116) Exhibit 114--Prescription number 6644104.
- (117) Exhibit 115--Prescription number 6644110.
- (118) Exhibit 116--Prescription number 6644224.
- (119) Exhibit 117--Prescription number 6644244.
- (120) Exhibit 118--Prescription number 6644499.
- (121) Exhibit 119--Prescription number 6644506.
- (122) Exhibit 120--Prescriptions numbered 6644687 and 6644688.
- (123) Exhibit 121--Prescriptions numbered 6644682 and 6644683.
- (124) Exhibit 122--Prescription number 6644690.
- (125) Exhibit 123--Prescription number 6647108.
- (126) Exhibit 124--Forty-page transcription of taped interview of Harold Peters conducted by James Reye and Robert Cole on January 10, 1996.
- (127) Exhibit 126--Ohio State Board of Pharmacy Statement Form of Stephen J. Tymcio, M.D. signed and notarized on February 9, 1996.
- (128) Exhibit 127--Three-page Ohio State Board of Pharmacy Statement Form of Mohammad Bahadori, M.D. signed and notarized on February 22, 1996.
- (129) Exhibit 128--Eight-page computer-generated printout dated February 9, 1996, of Kmart Pharmacy #3278 Reports as follows: Comprehensive Audit Listing, Summary, RPH Brand Summary, Billing Type T/P Summary, and Summary.
- (130) Exhibit 129--Six-page computer-generated printout dated February 9, 1996 of Kmart Pharmacy #3278 Reports as follows: Comprehensive Audit Listing, Summary, RPH Brand Summary, Billing Type T/P Summary, and Summary.
- (131) Exhibit 130--Copy of two-page handwritten statement of Pete Peters signed and witnessed on March 27, 1993.
- (132) Exhibit 131--Two-page computer-generated printout dated October 19, 1995, of Kmart Pharmacy #3278 Comprehensive Audit Listing report.
- (133) Exhibit 132--Three-page computer-generated printout dated April 29, 1995, of Kmart Pharmacy #3278 Comprehensive Audit Listing report.

- (134) Exhibit 133--Two-page computer-generated printout dated October 29, 1994, of Kmart Pharmacy #3278 Comprehensive Audit Listing report.
- (135) Exhibit 134--Two-page computer-generated printout dated November 13, 1994, of Kmart Pharmacy #3278 Comprehensive Audit Listing report.
- (136) Exhibit 135--Two-page computer-generated printout dated September 14, 1994, of Kmart Pharmacy #3278 Comprehensive Audit Listing report.
- (137) Exhibit 136--Four-page computer-generated printout dated September 29, 1995, of Kmart Pharmacy #3278 Comprehensive Audit Listing report.
- (138) Exhibit 137--Prescription number 4406209.
- (139) Exhibit 138--Prescriptions numbered 4405265 and 4405266.
- (140) Exhibit 139--Prescription number 4406449.
- (141) Exhibit 140--Prescription number 4407052.
- (142) Exhibit 141--Prescription number 4407050.
- (143) Exhibit 142--Prescription number 4407887.
- (144) Exhibit 143--Prescription number 4407961.
- (145) Exhibit 144--Prescription number 4405631.
- (146) Exhibit 145--Prescription number 6633225.
- (147) Exhibit 146--Prescription number 6640834.
- (148) Exhibit 147--Prescription number 6635611.
- (149) Exhibit 148--Prescription number 6637602.
- (150) Exhibit 149--Prescription number 6635590.
- (151) Exhibit 150--Prescription number 6633939.
- (152) Exhibit 151--Prescription number 6633236.
- (153) Exhibit 152--Prescription number 6641479.
- (154) Exhibit 153--Prescription number 6642280 and 6635590.
- (155) Exhibit 154--Prescription number 6635440.
- (156) Exhibit 155--Prescription number 6635391.
- (157) Exhibit 156--Prescriptions numbered 6635386 and 6635385.
- (158) Exhibit 157--Two-page Ohio State Board of Pharmacy Statement Form of W. J. Perng, M.D. signed and notarized on May 6, 1997.
- (159) Exhibit 158--Three-page Ohio State Board of Pharmacy Statement Form of W. J. Perng, M.D. signed and notarized on May 6, 1997.
- (160) Exhibit 159--Duplicate receipt for prescription number 6642035 dated November 22, 1995, and attached Hytrin Rebate Certificate, No. 235002 072273.
- (161) Exhibit 160--Duplicate receipt for prescription number 6642035 dated December 23, 1995, and attached Hytrin rebate form.
- (162) Exhibit 161--Duplicate receipt for prescription number 6642035 dated November 30, 1995, and attached Hytrin rebate form.
- (163) Exhibit 162--Duplicate receipt for prescription number 6642035 dated December 8, 1995, and attached Hytrin rebate form.
- (164) Exhibit 163--Duplicate receipt for prescription number 6642035 dated October 14, 1995, and attached Rebate Certificate, No. 235002 069498.
- (165) Exhibit 164--Duplicate receipt for prescription number 6641863 dated November 22, 1995, and attached Rebate Certificate, No. 235002 070799.
- (166) Exhibit 165--Duplicate receipt for prescription number 6641863 dated October 14, 1995, and attached Rebate Certificate, No. 235002 061218.
- (167) Exhibit 166--Duplicate receipt for prescription number 6641863 dated December 23, 1995, and attached Hytrin rebate form.
- (168) Exhibit 167--Duplicate receipt for prescription number 6641863 dated November 9, 1995, and attached Rebate Certificate, No. 235002 072308.
- (169) Exhibit 168--Duplicate receipt for prescription number 6641863 dated December 1, 1995, and attached Hytrin rebate form.
- (170) Exhibit 169--Duplicate receipt for prescription number 6641863 dated December 11, 1995, and attached Hytrin rebate form.
- (171) Exhibit 170--Duplicate receipt for prescription number 6641863 dated November 26, 1995, and attached Hytrin rebate form.
- (172) Exhibit 171--Duplicate receipt for prescription number 6641863 dated December 8, 1995, and attached Hytrin rebate form.
- (173) Exhibit 172--Duplicate receipt for prescription number 6641863 dated December 15, 1995, and attached Hytrin rebate form.
- (174) Exhibit 173--Duplicate receipt for prescription number 6641863 dated December 27, 1995, and attached Hytrin rebate form.

- (175) Exhibit 174--Duplicate receipt for prescription number 6642006 dated December 23, 1995, and attached Hytrin Rebate Certificate, No. 235002 057353.
- (176) Exhibit 175--Duplicate receipt for prescription number 6642006 dated October 14, 1995, and attached Hytrin rebate form.
- (177) Exhibit 176--Duplicate receipt for prescription number 6642006 dated November 25, 1995, and attached Hytrin Rebate Certificate, No. 235002 031785.
- (178) Exhibit 177--Duplicate receipt for prescription number 6642006 dated November 30, 1995, and attached Hytrin rebate form.
- (179) Exhibit 178--Duplicate receipt for prescription number 6642006 dated December 14, 1995, and attached Hytrin rebate form.
- (180) Exhibit 179--Duplicate receipt for prescription number 6642035 dated December 19, 1995, and attached Hytrin rebate form.
- (181) Exhibit 180--Duplicate receipt for prescription number 6642035 dated September 29, 1995, and attached Hytrin rebate form.
- (182) Exhibit 181--Duplicate receipt for prescription number 6642035 dated November 9, 1995, and attached Hytrin rebate form.
- (183) Exhibit 182--Duplicate receipt for prescription number 6642035 dated December 28, 1995, and attached Hytrin rebate form.
- (184) Exhibit 183--Duplicate receipt for prescription number 6642035 dated December 11, 1995, and attached Hytrin rebate form.
- (185) Exhibit 184--Duplicate receipt for prescription number 6642035 dated September 21, 1995, and attached Hytrin rebate form.
- (186) Exhibit 185--Duplicate receipt for prescription number 6642035 dated December 5, 1995, and attached Hytrin rebate form.
- (187) Exhibit 186--Duplicate receipt for prescription number 6642459 dated December 24, 1995, and attached Hytrin rebate form.
- (188) Exhibit 187--Duplicate receipt for prescription number 6642459 dated September 29, 1995, and attached Hytrin rebate form.
- (189) Exhibit 188--Duplicate receipt for prescription number 6642459 dated September 21, 1995, and attached Hytrin rebate form.
- (190) Exhibit 189--Duplicate receipt for prescription number 6642459 dated November 9, 1995, and attached Hytrin rebate form.
- (191) Exhibit 190--Duplicate receipt for prescription number 6642459 dated December 20, 1995, and attached Hytrin rebate form.
- (192) Exhibit 191--Duplicate receipt for prescription number 6642459 dated December 10, 1995, and attached Hytrin rebate form.
- (193) Exhibit 192--Duplicate receipt for prescription number 6642459 dated December 6, 1995, and attached Hytrin rebate form.
- (194) Exhibit 193--Duplicate receipt for prescription number 6642459 dated November 26, 1995, and attached Hytrin rebate form.
- (195) Exhibit 194--Duplicate receipt for prescription number 6642459 dated December 1, 1995, and attached Hytrin rebate form.
- (196) Exhibit 195--Duplicate receipt for prescription number 6641877 dated November 9, 1995, and attached Hytrin Rebate Certificate, No. 235002 055683.
- (197) Exhibit 196--Duplicate receipt for prescription number 6641877 dated December 9, 1995, and attached Hytrin rebate form.
- (198) Exhibit 197--Duplicate receipt for prescription number 6641877 dated November 26, 1995, and attached Hytrin Rebate Certificate, No. 235002 043762.
- (199) Exhibit 198--Duplicate receipt for prescription number 6641877 dated December 24, 1995, and attached Hytrin Rebate Certificate, No. 235002 072420.
- (200) Exhibit 199--Duplicate receipt for prescription number 6641877 dated December 5, 1995, and attached Hytrin rebate form.
- (201) Exhibit 200--Duplicate receipt for prescription number 6641877 dated November 30, 1995, and attached Hytrin rebate form.
- (202) Exhibit 201--Duplicate receipt for prescription number 6641877 dated September 21, 1995, and attached Hytrin rebate form.
- (203) Exhibit 202--Duplicate receipt for prescription number 6641877 dated October 14, 1995, and attached Hytrin Rebate Certificate, No. 235002 034691.
- (204) Exhibit 203--Duplicate receipt for prescription number 6641877 dated December 29, 1995, and attached Hytrin rebate form.
- (205) Exhibit 204--Duplicate receipt for prescription number 6641877 dated December 20, 1995, and attached Hytrin rebate form.

- (206) Exhibit 205--Duplicate receipt for prescription number 6641877 dated December 14, 1995, and attached Hytrin rebate form.
- (207) Exhibit 206--Copy of letter from Cynthia DeJong dated January 30, 1996, and attached copies of fifty-five cancelled checks from Complimentary Prescription Service.
- (208) Exhibit 206A--Two-page copy of memo to Paul Soucie from Jim Reye, not dated.
- (209) Exhibit 207--Copy of Community Mutual Medical Claim Form, No. 14445653820, with attached copies of two Parma-Ridge Pharmacy receipts.
- (210) Exhibit 208--Community Mutual Medical Claim Form, No. 15245972290, with two attached Parma-Ridge Pharmacy receipts.
- (211) Exhibit 209--Community Mutual Medical Claim Form, No. 16046310351, with two attached Parma-Ridge Pharmacy receipts.
- (212) Exhibit 210--Community Mutual Medical Claim Form, No. 16746592421, with two attached Parma-Ridge Pharmacy receipts.
- (213) Exhibit 211--Community Mutual Medical Claim Form, No. 17446940049, with two attached Parma-Ridge Pharmacy receipts.
- (214) Exhibit 212--Community Mutual Medical Claim Form, No. 17947110550, with two attached Parma-Ridge Pharmacy receipts.
- (215) Exhibit 213--Community Mutual Medical Claim Form, No. 18647370055, with two attached Parma-Ridge Pharmacy receipts.
- (216) Exhibit 214--Community Mutual Medical Claim Form, No. 18147444652, with two attached Parma-Ridge Pharmacy receipts.
- (217) Exhibit 215--Community Mutual Medical Claim Form, No. 19847840104, with two attached Parma-Ridge Pharmacy receipts.
- (218) Exhibit 216--Community Mutual Medical Claim Form, No. 20548071384, with two attached Parma-Ridge Pharmacy receipts.
- (219) Exhibit 217--Community Mutual Medical Claim Form, No. 20748211265, with two attached Parma-Ridge Pharmacy receipts.
- (220) Exhibit 218--Community Mutual Medical Claim Form, No. 16446462961, with two attached Parma-Ridge Pharmacy receipts.
- (221) Exhibit 219--Community Mutual Medical Claim Form, No. 17046751013, with two attached Parma-Ridge Pharmacy receipts.
- (222) Exhibit 220--Community Mutual Medical Claim Form, No. 17246821402, with two attached Parma-Ridge Pharmacy receipts.
- (223) Exhibit 221--Community Mutual Medical Claim Form, No. 17847082183, with two attached Parma-Ridge Pharmacy receipts.
- (224) Exhibit 222--Community Mutual Medical Claim Form, No. 18647281956, with two attached Parma-Ridge Pharmacy receipts.
- (225) Exhibit 223--Community Mutual Medical Claim Form, No. 20148130768, with two attached Parma-Ridge Pharmacy receipts.
- (226) Exhibit 224--Community Mutual Medical Claim Form, No. 19447664331, with two attached Parma-Ridge Pharmacy receipts.
- (227) Exhibit 225--Community Mutual Medical Claim Form, No. 20147933906, with two attached Parma-Ridge Pharmacy receipts.
- (228) Exhibit 226--Community Mutual Medical Claim Form, No. 20848241880, with two attached Parma-Ridge Pharmacy receipts.
- (229) Exhibit 227--Community Mutual Medical Claim Form, No. 16046336049, with two attached Parma-Ridge Pharmacy receipts.
- (230) Exhibit 228--Community Mutual Medical Claim Form, No. 16546531288, with two attached Parma-Ridge Pharmacy receipts.
- (231) Exhibit 229--Community Mutual Medical Claim Form, No. 17046751113, with two attached Parma-Ridge Pharmacy receipts.
- (232) Exhibit 230--Community Mutual Medical Claim Form, No. 18647350335, with two attached Parma-Ridge Pharmacy receipts.
- (233) Exhibit 231--Community Mutual Medical Claim Form, No. 19948010126, with two attached Parma-Ridge Pharmacy receipts.
- (234) Exhibit 232--Community Mutual Medical Claim Form, No. 19247620379, with two attached Parma-Ridge Pharmacy receipts.
- (235) Exhibit 233--Community Mutual Medical Claim Form, No. 20548071389 with two attached Parma-Ridge Pharmacy receipts.

Respondent's Exhibits:

- (1) Exhibit 1A--Copy of six-page letter from Dr. Gintautas Z. Sabataitis dated May 2, 1998.
- (2) Exhibit 1B--Copy of eight-page letter from Dr. Gintautas Z. Sabataitis dated February 28, 1998.
- (3) Exhibit 1C--Copy of four-page letter from Dr. Gintautas Z. Sabataitis dated March 1, 1996.
- (4) Exhibit 1D--Copy of letter from Rev. William G. Bouhall, not dated.
- (5) Exhibit 2A--Copy of five-page Pharmacist/Pharmacy Manager Performance Appraisal Form of Harold Peters signed by Harold Peters on June 1, 1994.
- (6) Exhibit 2B--Copy of four-page Performance Appraisal of Harold Peters dated June 8, 1995.
- (7) Exhibit 3A--Copy of Cleveland State University Education Reference Form regarding Harold R. Peters by William Schmitt dated February 21, 1997.
- (8) Exhibit 3B--Copy of Cleveland State University Education Reference Form regarding Harold R. Peters by Paul D. Dubitsky dated September 9, 1997.
- (9) Exhibit 3C--Copy of Cleveland State University Education Reference Form regarding Harold R. Peters by Daniel D. Drake dated February 11, 1997.
- (10) Exhibit 3D--Copy of Cleveland State University Education Reference Form regarding Harold R. Peters by Joan M. Baker dated January 14, 1997.
- (11) Exhibit 3E--Copy of Cleveland State University Student Teaching Evaluation of Pete Peters dated May 30, 1997.
- (12) Exhibit 3F--Copy of letter from Shelley Weber dated May 5, 1998.

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Harold Robert Peters was originally licensed in the state of Ohio on March 6, 1987, pursuant to examination; and, on April 2, 1998, Harold Robert Peters' license was summarily suspended in accordance with Section 3719.121(C) of the Ohio Revised Code.
- (2) Harold Robert Peters did, on or about March 13, 1998, plead guilty to one count of Insurance Fraud in violation of Section 2913.47 of the Ohio Revised Code, a third degree felony, and two counts of Illegal Processing of Drug Documents in violation of Section 2925.23 of the Ohio Revised Code, fourth degree felonies. State of Ohio vs. Harold Peters, Case No. CR 356362, Cuyahoga County Common Pleas Court.
- (3) Harold Robert Peters did, on or about October 21, 1991, through March 27, 1993, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs and other property of Medic Drug beyond the express or implied consent of the owner, to wit: Harold Robert Peters admitted that while practicing pharmacy at Medic Drug in Parma, Ohio, he stole dangerous drugs, merchandise, and cash, for which he made restitution to Medic Drug in the amount \$45,000.00. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Harold Robert Peters did, on or about January 3, 1991, through July 29, 1995, with purpose to defraud, present to an insurer written statements as claims for payment, knowing that the statements were false and deceptive, to wit: Harold Robert Peters forged 3,197 false prescription receipts while practicing pharmacy at Fox Drugs, Parma-Ridge Drugs, and/or Medic Drug, and he submitted false claims to Blue Cross and Blue Shield of Ohio totaling \$302,551.85; however, after figuring in the deductibles, Harold Robert Peters received \$290,439.82 for reimbursement of the fraudulent claims. To authenticate false prescription claims from Parma-Ridge Drugs, Harold Robert Peters forged the signature of Walter Leissa, R.Ph., after Leissa's death in June of 1993. Such conduct is in violation of Section 2913.47 of the Ohio Revised Code.
- (5) Harold Robert Peters did, on or about April 1, 1995, through July 27, 1995, with purpose to defraud, present to an insurer written statements as claims for payment, knowing that the statements were false and deceptive, to wit: Harold Robert Peters

submitted 38 false claims to Anthem Blue Cross and Blue Shield of Cincinnati, Ohio, for a total of \$14,805.85, attempting to seek reimbursement for the fraudulent claims. Such conduct is in violation of Section 2923.02 of the Ohio Revised Code as it relates to Section 2913.47 of the Ohio Revised Code.

- (6) Harold Robert Peters did, on or about the following dates, make false or forged prescriptions for dangerous drugs, to wit: Harold Robert Peters created the following documents purporting to be prescriptions to obtain rebate checks from numerous pharmaceutical manufacturers:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
6629748	03/20/94	Tagamet 400mg	15
8800368	03/21/94	Bromtapp	120
6629859	03/23/94	Monistat 7, 2%	45
6630012	03/28/94	Zantac 150mg	60
6630013	03/28/94	Calan SR 180mg	30
6630193	04/02/94	Entex-LA	100
6630194	04/02/94	Biaxin 500mg	28
6630195	04/02/94	Rhon-Poul	10
6631586	05/15/94	Tagamet 800mg	30
6631733	05/19/94	Tagamet 400mg	60
6631735	05/20/94	Tagamet 300mg	100
6632433	06/10/94	Claritin 10mg	10
6632434	06/10/94	Claritin 10mg	10
6632445	06/11/94	Claritin 10mg	20
6632446	06/11/94	Nitro-Dur 0.2mg	30
6632450	06/11/94	Imdur 60mg	100
6632460	06/12/94	Imdur 60mg	60
6632461	06/12/94	Nitro-Dur 0.2mg	30
6632917	06/21/94	Nitro-Dur 0.2mg	30
6633331	07/08/94	Tagamet 400mg	60
6633330	07/08/94	Elocon 0.10%	45
6633329	07/08/94	Methylprednisol 4mg	21
6633810	07/24/94	Nitro-Dur 0.2mg	30
6634305	08/10/94	Proventil 90mcg	17
6634304	08/10/94	Vancenase AQ 0.04%	25
6634331	08/11/94	Vanceril 42mcg	17
6634332	08/11/94	Proventil 90mcg	17
6634389	08/12/94	Chlorzoxazone 500mg	30
6634466	08/15/94	Diltiazem ER 90mg	60
6634458	08/15/94	Proventil 90mcg	17
6634459	08/15/94	Vancenase Aq 0.04%	25
6634574	08/20/94	Vancenase AQ 0.04%	25gm
6634575	08/20/94	Vanceril 42MCG	17gm
6634687	08/24/94	Zantac 150mg	68
6634727	08/25/94	Diltiazem ER 90mg	60
6634723	08/25/94	Relafen 500mg	60
6634721	08/25/94	Migquin	60
6635463	09/21/94	Trimox 250/5ml	150
6635754	10/02/94	Claritin 10mg	20
6635884	10/06/94	Diltiazem ER 60mg	60
6635885	10/06/94	Diltiazem ER 90mg	60
6636043	10/12/94	Erythromycin 250mg	100
6636445	10/24/94	K-Dur 20meq	30
6636488	10/25/94	K-Dur 20meq	30
6636984	11/13/94	Ibuprofen 800mg	100
6637486	11/30/94	K-Dur 20meq	30
6639256	01/31/95	Nitro-Dur 0.3mg	30
6641788	05/01/95	Synthroid 0.1mg	200
6641891	05/04/95	Hytrin 10mg	30
6641863	05/04/95	Hytrin 5mg	30
6641877	05/04/95	Hytrin 2mg	30

6642142	05/12/95	Hytrin 5mg	30
6642166	05/13/95	Flonase 0.05%	16
6642174	05/14/95	Hytrin 5mg	30
6642283	05/18/95	Flonase 0.05%	16
6642459	05/24/95	Hytrin 5mg	30
6642693	06/02/95	Claritin-D 5-120	30
6642694	06/02/95	Theo-Dur 200mg	60
6642783	06/06/95	Claritin-D 5-120	30
6642925	06/10/95	Claritin-D 5-120	30
6642936	06/10/95	Imdur 60mg	30
6643140	06/17/95	Claritin 10mg	20
6642926	06/17/95	Claritin-D 5-120	20
6643120	06/17/95	Claritin 10mg	20
6643119	06/17/95	Imdur 60mg	100
6643123	06/17/95	Claritin 10mg	30
6643121	06/17/95	Imdur 60mg	30
6643122	06/17/95	Nitro-Dur 0.2mg	30
6643171	06/19/95	Synthorid 0.05mg	100
6643124	06/21/95	Nitro-Dur 0.4mg	30
6643125	06/21/95	Claritin 10mg	30
6643392	06/27/95	Nitro-Dur 0.4mg	30
6643812	07/12/95	Nitro-Dur 0.6mg	30
6644104	07/23/95	Flonase 0.05%	16
6644110	07/23/95	Flonase 0.05%	16
6644224	07/26/95	Vanceril 42mcg	17
6644244	07/28/95	Vanceril 42mcg	17
6644499	08/05/95	Nitro-Dur 0.2mg	30
6644506	08/06/95	Flonase 0.05%	16
6644687	08/12/95	Proventil 90mcg	17
6644688	08/12/95	Vanceril 42mcg	17
6644682	08/12/95	Proventil 90mcg	17
6644683	08/12/95	Vanceril 42mcg	17
6644690	08/12/95	Proventil 90mcg	17
6647108	11/09/95	Vanceril 42mcg	17

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code (as it existed prior to July 1, 1996).

- (7) Harold Robert Peters did, on or about the following dates, intentionally make and/or knowingly possess false or forged prescriptions, to wit: Harold Robert Peters created and possessed on file in the pharmacy the following prescriptions so as to facilitate insurance fraud:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
4405265	04/29/94	Xanax 0.5mg	30 tablets
4405266	04/29/94	Darvocet- N 100	50 tablets
4405631	07/06/94	Xanax 0.5mg	30 tablets
4405266	09/14/94	Darvocet- N 100	50 tablets
4405631	09/14/94	Xanax 0.5mg	30 tablets
4405265	10/29/94	Xanax 0.5mg	30 tablets
4406209	11/02/94	Darvocet - N 100	50 tablets
4405631	11/13/94	Xanax 0.5mg	30 tablets
4406449	01/04/95	Lortab 5/500mg	30 tablets
4407050	04/19/95	Dimetane -DC	240 ml
4407052	04/19/95	Darvocet - N 100	100 tablets
4407050	04/29/95	Dimetane -DC	240 ml
4407887	09/20/95	Histussin-HC	40 ml
4407887	09/29/95	Histussin-HC	240 ml
4407961	10/04/95	Xanax 0.25mg	30 tablets
4407887	10/19/95	Histussin-HC	240 ml

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

- (8) Harold Robert Peters did, on or about the following dates, make false or forged prescriptions for dangerous drugs, to wit: Harold Robert Peters created the following documents purporting to be prescriptions to facilitate insurance fraud:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
6633236	07/08/94	Amoxicillin 500mg	30 caps
6633939	07/28/94	Quinine Sulfa 260mg	30 tabs
6635386	09/18/94	Zantac 150mg	60 tabs
6635391	09/18/94	Retin-A 20gm	
6635440	09/20/94	Cardec DM 480ml	
6635590	09/26/94	Prilosec 20mg	30 caps
6635611	09/27/94	Relafen 500mg	120 tabs
6637602	12/02/94	Tavist - D	24 tabs
6640834	03/27/95	Otic Solution 10ml	
6635590	04/05/95	Prilosec 20mg	30 caps
6641479	04/19/95	Trimox 500mg	30 caps
6633225	07/05/95	Cyclobenzaprine 10mg	30 tabs

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code (as it existed prior to July 1, 1996).

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 constitute 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 (8) 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) and (6) through (8) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. 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 April 2, 1998.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Harold Robert Peters:

- (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. 03-2-16710, held by Harold Robert Peters 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. 03-2-16710, held by Harold Robert Peters 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. 03-2-16710, held by Harold Robert Peters effective as of the date of the mailing of this Order.

