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Minutes Of The Meeting
Ohio State Board of Pharmacy
Columbus, Ohio
April 5 & 6, 1999

MONDAY, APRIL 5, 1999

8:10 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:

Robert B. Cavendish, R.Ph. (Vice-President); Ann D. Abele, R.Ph.; Paul F. Lamping, R.Ph.; Suzanne L. Neuber, R.Ph.; Ruth A. Plant, R.Ph.; and Nicholas R. Repke, Public Member.

Vice-President Cavendish assumed the chair for the meeting due to the planned absence of President Maslak.

RES. 99-154 William Winsley, Executive Director, informed the Board that the action taken at the March, 1999 meeting regarding the final approval of Proposed Rule 4729-7-02 would have to be repeated at this meeting. The jurisdiction of the Joint Committee on Agency Rule Review (JCARR) for this rule did not expire until March 10, 1999, one day after the Board took the action to approve the final filing of the rule. Under the laws and rules governing the implementation of rules in Ohio, the Board cannot give the final approval and instruct Board staff to file a rule until after the JCARR jurisdiction has ended. Mr. Lamping moved that the Board again give final approval to adopt Proposed Rule 4729-7-02 and instruct Board staff to file the rule with an effective date of April 15, 1999. The motion was seconded by Ms. Abele and approved (Aye-6/Nay-0).

8:20 a.m.

Mrs. Plant moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against licensees and registrants and for the consideration of personnel matters pursuant to Section 121.22(G)(1) of the Revised Code. Mr. Lamping seconded the motion. Vice-President Cavendish then conducted the following roll call vote: Abele-Yes, Cavendish-Yes, Lamping-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

9:00 a.m.

Board member Amonte Littlejohn arrived and joined the meeting.

9:30 a.m.

RES. 99-155 The Executive Session ended and the meeting was opened to the public. A letter from Harland Britz, attorney for Thomas Szymczak, requesting an early termination of probation for Mr. Szymczak was presented to the Board. Mrs. Plant moved that the Board deny the request for an early termination of probation for Thomas Szymczak, Docket Number D-960214-040. The motion was seconded by Mr. Lamping and approved by the Board (Aye-6/Nay-0/Abstain-1 [Littlejohn]).

9:40 a.m.

The Board took a brief recess.

9:55 a.m.

The meeting resumed. The Board was joined by Timothy Benedict, Assistant Executive Director, for the discussion of agenda items. Mr. Winsley distributed a copy of a continuing education program submitted by University Consultants. University Consultants was requesting Board approval for the course to be used to meet the requirement for Board-approved jurisprudence continuing pharmacy education. The Board members were asked to review the course for discussion the next day.

RES. 99-156 A request for clarification of Rule 4729-5-30 of the Ohio Administrative Code regarding the faxing of prescriptions was received from Bay Pharmacy, Bay Village, Ohio. Specifically, Bay Pharmacy was requesting information regarding the proper way to fax prescriptions from assisted-living facilities. After reviewing the letter and discussing the wide variety of services and levels of care that are now available from facilities who provide assisted living services, the consensus of the Board was that the faxing of prescriptions must follow the appropriate Board rule. If the facility meets the definition of an institutional facility as defined in Rule 4729-17-01, the pharmacy may follow the faxing requirements of Rule 4729-17-09. If the facility does not meet the definition of an institutional facility, then the pharmacy must follow the faxing requirements of Rule 4729-5-30, which would require the fax to come directly from the prescriber's office or for the pharmacy to receive the original prescription prior to dispensing.

RES. 99-157 Mr. Winsley distributed a copy of a complaint received from a physician concerning the marketing practice of a pharmacy chain. A patient on bronchodilator therapy had received an unsigned letter from the pharmacy chain requesting that the patient discuss with the physician a change in therapy to a different drug. The letter stated that the cost of the mailing had been paid for by the drug company that marketed the suggested drug. The physician involved was a specialist in pulmonary medicine who had diagnosed the patient's severe chronic obstructive pulmonary disease and had already determined that the suggested drug was not appropriate. The physician was greatly concerned that the letter suggested to the patient that she was receiving inadequate care from her specialist and would, therefore, undermine the trust required between the physician and the patient. Furthermore, the physician was concerned that individuals who were not familiar with the patient were making inappropriate recommendations for therapy in a manner that appeared to be motivated by monetary concerns more than a concern for the patient. While they could find nothing illegal about the practice, the Board members asked Mr. Winsley to express their concern about such an inappropriate activity directly to the pharmacy chain involved.

The Board members then received a copy of a request for any proposed constitutional amendments for the National Association of Boards of Pharmacy (NABP) meeting in May. There were no amendments to the NABP Constitution suggested.

RES. 99-158 Mr. Winsley requested Board approval to sign the State Letter of Agreement with the NABP Foundation for the 1999-2000 newsletters. Mr. Lamping moved that the Board approve the signing of the contract. The motion was seconded by Mr. Littlejohn and approved (Aye-7/Nay-0).

RES. 99-159 Board approval for travel expenses and time to attend an invitational conference sponsored by the Drug Enforcement Administration (DEA) in Florida immediately prior to the NABP Annual Meeting in May was requested by Mr. Winsley. He asked that his time and Mr. Benedict's time be approved by the Board as work time. After reviewing the meeting's discussion topics, Mr. Lamping moved that the Board approve the attendance of Mr. Winsley and Mr. Benedict at the meeting and that their travel and meeting time be considered work time for the Board. The motion was seconded by Mr. Repke and approved by the Board (Aye-7/Nay-0).

Mr. Winsley reported on a meeting that he and William McMillen, Licensing Administrator, had attended. The meeting topic was the "Public Health Infrastructure and Our Role in Biologic Incidents" and was sponsored by the Department of Health.

RES. 99-160 Pursuant to the Board's desire to maintain a national presence in pharmacy matters, Mr. Winsley requested Board approval for travel expenses and time to attend the National Association of Chain Drug Stores/Boards of Pharmacy meeting in San Diego from August 28, 1999 to September 1, 1999. After discussion of the meeting topics and the positive comments received from the active participation of the Board in last year's meeting, Mr. Lamping moved that the Board approve Mr. Winsley's attendance and expenses at this meeting and that his time be considered work time for the Board. The motion was seconded by Mrs. Neuber and approved by the Board (Aye-7/Nay-0).

A letter from NABP to each of its member boards of pharmacy that outlined probable changes to the candidate costs of the NAPLEX and MPJE examinations was distributed to the Board members for their information.

RES. 99-161 The Board next discussed the NABP Verified Internet Pharmacy Practice Sites (VIPPS) program. A letter of announcement for the program had been received by the Board office and copies were distributed to the Board members for review. The Board discussed concerns about the potential liability of NABP and the possible lack of effectiveness of the program as outlined in the letter. Board staff was instructed to convey the Board's concerns to NABP as soon as possible.

RES. 99-162 Next, Mr. Benedict presented a request for a waiver pursuant to Rule 4729-5-11 of the Ohio Administrative Code. Following discussion, Mr. Lamping moved that the request of Douglas Theuring, R.Ph. for approval to serve as the responsible pharmacist at the following sites be approved for one year:

Elmwood Place Pharmacy (02-0149650)
Elmwood Institutional Pharmacy (02-0917250)

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

The response from Madison Pharmacy to the Cease and Desist Letter issued to them by the Board at the March, 1999 meeting was distributed to the Board members for their review. As the pharmacy was in the application process for a license as a Terminal Distributor of Dangerous Drugs, no further Board action was considered necessary at the present time.

11:15 a.m.

Ms. Abele moved that the Minutes of the March 8 & 9, 1999 meeting be approved as corrected. Mr. Lamping seconded the motion and it was approved by the Board (Aye-7/-Nay-0).

Ms. Abele then gave the Board a brief report on the activities of the Nursing Board Advanced Practice Nurse Formulary Committee.

11:30 a.m.

The Board recessed for lunch.

1:00 p.m.

The Board reconvened in Room 1914, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with all members present except Diane Adelman and Joseph Maslak.

1:05 p.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of NorthCoast Health Care.

2:10 p.m.

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

2:20 p.m.

The meeting resumed. Mr. Lamping moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against licensees and registrants pursuant to Section 121.22(G)(1) of the Revised Code. Mrs. Plant seconded the motion. Vice-President Cavendish then conducted the following roll call vote: Abele-Yes, Cavendish-Yes, Lamping-Yes, Littlejohn-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

2:28 p.m.

RES. 99-163

The Executive Session ended and the meeting was opened to the public. Mr. Repke moved that the Board approve the request for a continuance of the hearing in the matter of Gilbert Art that had been scheduled for Tuesday, April 6, 1999 at 1:30 p.m. The request was made by Mr. Art's attorney, Samuel B. Weiner. The motion was seconded by Mr. Littlejohn and approved (Aye-7/Nay-0).

2:34 p.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Joseph Martin Rukse, Huntington, West Virginia.

3:35 p.m.

The hearing concluded and the record was closed.

3:40 p.m.

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

4:00 p.m.

RES. 99-164

The Executive Session ended and the meeting was opened to the public. Mrs. Plant moved that the Board adopt the following Order in the matter of Northcoast Health Care and that Board staff be instructed to notify the respondent of this order as soon as possible:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-990305-034)

In The Matter Of:

**NORTHCOAST HEALTH CARE GROUP, INC.
(F.K.A. INTERIM HEALTHCARE OF NORTHEAST OHIO, INC.)**

c/o Lee A. Passell
3645 Warrensville Center Road, Suite 124
Shaker Heights, Ohio 44122

INTRODUCTION

THE MATTER OF NORTHCOAST HEALTH CARE GROUP, INC. (F.K.A. INTERIM HEALTHCARE OF NORTHEAST OHIO, INC.) CAME TO HEARING ON APRIL 5, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ANN D. ABELE, R.Ph.; ROBERT B. CAVENDISH, R.Ph. (presiding); PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

NORTHCOAST HEALTH CARE GROUP, INC. (F.K.A. INTERIM HEALTHCARE OF NORTHEAST OHIO, INC.) WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Joann Predina, R.Ph.; Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Valerie Perout, R.N.; NorthCoast Health Care Group, Inc.
- (2) Lee Passell, President, NorthCoast Health Care Group, Inc.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of four-page Proposal to Deny/Notice of Opportunity for Hearing letter in the matter of NorthCoast Health Care Group, Inc. dated March 5, 1999.
- (2) Exhibit 1A--Hearing Request letter from NorthCoast Health Care Group, Inc. dated March 5, 1999.
- (3) Exhibit 1B--Copy of Hearing Schedule letter in the matter of NorthCoast Health Care Group, Inc. dated March 10, 1999.
- (4) Exhibit 1C--Copy of Hearing Schedule letter in the matter of NorthCoast Health Care Group, Inc. dated March 23, 1999.
- (5) Exhibit 1D--Copy of Application for Registration as a Terminal Distributor of Dangerous Drugs signed by Lee A. Passell, dated February 19, 1999, with attachments: Limited License Personnel List; Limited Category 2-Protocol dated October 19, 1998; State of Ohio Certificate Number 657836 dated January 11, 1999; Certificate of Amendment to the Articles of Incorporation of Interim HealthCare of Northeast Ohio, Inc. dated January 4, 1999.
- (6) Exhibit 2--Copies of fifteen invoices from various wholesalers for purchases by Interim HealthCare dated May 6, 1997 through September 23, 1998.
- (7) Exhibit 3--Copy of vial and label of Epinephrine 1mg/1ml found on site.
- (8) Exhibit 4--Copy of three-page Dangerous Drug Distributor Inspection Report for Interim Health Care (N.K.A. NorthCoast Health Care Group, Inc.) dated October 19, 1998.
- (9) Exhibit 5--Copies of thirty-five Group Immunization Influenza (Flu) Vaccine Patient Information Sheets and Completed Releases signed and dated October 5, 1998.
- (10) Exhibit 6--Written Statement of Melissa M. Biedenharn, R.Ph. dated October 19, 1998.
- (11) Exhibit 7--Copy of Written Statement of Sally MacDermott, R.N. dated October 5, 1998.
- (12) Exhibit 8--Copy of nine-page Procedural Response to Error documented by Interim HealthCare of Northeast Ohio.
- (13) Exhibit 9--Written Statement of Joann D. Predina, R.Ph. dated March 17, 1999.

Respondent's Exhibits:

- (1) Exhibit A--Copy of Policy for Management of Dangerous Drugs for NorthCoast Health Care Group, Inc. and it's (*sic*) Subsidiaries dated March 31, 1999.
- (2) Exhibit B--Copy of Limited License Personnel List.
- (3) Exhibit C--Copy of Daily Refrigerator Checklist Form for NorthCoast Health Care Group, Inc. and it's (*sic*) Subsidiaries.
- (4) Exhibit D--Copy of Tracking of Order and Receipt of Dangerous Drugs Form for NorthCoast Health Care Group, Inc. and it's (*sic*) Subsidiaries.
- (5) Exhibit E--Copy of Tracking of Return to Wholesaler of Origin of Dangerous Drugs Form for NorthCoast Health Care Group, Inc. and it's (*sic*) Subsidiaries.
- (6) Exhibit F--Copy of Possession of Dangerous Drugs Log Form for NorthCoast Health Care Group, Inc. and it's (*sic*) Subsidiaries.
- (7) Exhibit G--Copy of Disposition of Dangerous Drugs Log Form for NorthCoast Health Care Group, Inc. and it's (*sic*) Subsidiaries.
- (8) Exhibit H--Copy of Notarized Limited Category 2 - Protocol signed by Richard Wamsley, M.D. and dated October 19, 1998.
- (9) Exhibit I--Copy of Consideration for Administration/Management of Dangerous Drugs in Community Clinics for NorthCoast Health Care Group, Inc. and it's (*sic*) Subsidiaries dated March 31, 1999.
- (10) Exhibit J--Copy of Community Clinics-Offsite Tracking of Dangerous Drugs Form for NorthCoast Health Care Group, Inc. and it's (*sic*) Subsidiaries.
- (11) Exhibit K--Copies of Invoices for Medication Refrigerator Locks installed at NorthCoast Health Care, Inc., Shaker Heights, Ohio; Sandusky, Ohio; and Elyria, Ohio locations.

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 Ohio State Board of Pharmacy indicate that Lee A. Passell is the applicant signing on behalf of NorthCoast Health Care Group, Inc., formerly known as Interim HealthCare, Elyria; Interim HealthCare, Sandusky; and Interim HealthCare, Shaker Heights (hereafter, collectively referred to as "Interim"), pursuant to Section 4729.55 of the Ohio Revised Code.
- (2) During a period prior to and including October 1998, Interim possessed for retail sale dangerous drugs when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Interim, prior to being licensed as a terminal distributor, was in possession of vaccines, which are dangerous drugs. Such conduct is in violation of Section 4729.51 of the Ohio Revised Code.
- (3) On or about October 19, 1998, Interim failed to satisfy the qualifications of a terminal distributor as set forth in Section 4729.55 of the Ohio Revised Code, to wit: Interim was not equipped as to land, buildings, and equipment to properly carry on the business of a terminal distributor within the category of licensure approved by the Board. During an on-site inspection, Interim failed to provide effective and approved controls and procedures to guard against theft and diversion of dangerous drugs. A Compliance Specialist from the Ohio State Board of Pharmacy observed the below listed dangerous drugs unsecured, in an unlocked refrigerator located in a "kitchen type" area:

<u>Drug Name</u>	<u>Quantity</u>	<u>Dosage</u>
Pneumovax 23 (outdated)	2	2.5 multi-dose vials
Pnu Immune and Pneumovax 23	19	2.5 multi-dose vials
Pneumovax 23	29	0.5ml single-dose vials
Flu Vaccine	18	5.0ml vials
Flu Vaccine	2	partial 5.0ml vials
Epinephrine 1:1000	3	ampoules

Such conduct is in violation of Rules 4729-9-05 and 4729-9-11 of the Ohio Administrative Code.

- (4) During a period prior to and including October 5, 1998, Interim failed to provide adequate safeguards to assure that dangerous drugs were being distributed in accordance with all state and federal laws as required in Section 4729.55(C) of the Ohio Revised Code, to wit: on October 5, 1998, a receptionist at Interim's Shaker Heights office prepared an order for mass inoculation of flu vaccines from an unsecured supply of dangerous drugs, and the order was mistakenly filled with vials of Tubersol. The order was not checked on site by the nursing staff of Interim, or by the administering nurse, also an employee of Interim. Thirty-six (36) patients were injected with Tubersol as a result of this improper distribution. Such conduct is in violation of Rules 4729-9-05 and 4729-9-11 of the Ohio Administrative Code.
- (5) On or about October 16, 1998, Interim failed to provide supervision and control of dangerous drugs as required in Division (B) of Section 4729.55 of the Ohio Revised Code, and adequate safeguards to assure that dangerous drugs were being distributed in accordance with all state and federal laws as required in Section 4729.55 of the Ohio Revised Code, to wit: an Ohio State Board of Pharmacy Compliance Specialist observed four syringes of clear liquid drawn and laying on a table located near the pharmacy at Walgreens, Lake Shore Boulevard, Cleveland, Ohio. The nurse on duty, employed by Interim, was shopping at the time of the inspection. Further, Walgreen employees had observed the nurse sleeping between patients. Such conduct is in violation of Rules 4729-9-05 and 4729-9-11 of the Ohio Administrative Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes violating Section 4729.51 of the Revised Code as provided in Division (D) of Section 4729.55 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3) through (5) of the Findings of Fact constitute violating a rule of the Board as provided in Division (D) of Section 4729.55 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes failing to be equipped as to land, buildings, and equipment to properly carry on the business of a terminal distributor of dangerous drugs within the category of licensure approved by the board as provided in Division (A) of Section 4729.55 of the Ohio Revised Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (4) and (5) of the Findings of Fact constitute failing to assure adequate safeguards to prevent the sale or other distribution of dangerous drugs by any person other than a pharmacist or licensed health professional authorized to prescribe drugs as provided in Division (C) of Section 4729.55 of the Ohio Revised Code.
- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitutes failing to maintain supervision and control over the possession and custody of such dangerous drugs that may be acquired by or on behalf of the applicant as provided in Division (B) of Section 4729.55 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.55 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of NorthCoast Health Care Group, Inc.:

- (A) The Ohio State Board of Pharmacy hereby approves the issuance of a Terminal Distributor of Dangerous Drugs license to NorthCoast Health Care Group, Inc.
- (B) A Compliance and Enforcement Specialist employed by the Ohio State Board of Pharmacy will, within the next twelve (12) months, make an unannounced inspection of NorthCoast Health Care Group, Inc.

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 by the Board (Aye-7/Nay-0).

Mrs. Neuber then moved that the Board adopt the following Order in the matter of Joseph Martin Rukse:

RES. 99-165

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-981230-026)

In The Matter Of:

JOSEPH MARTIN RUKSE, JR., R.Ph.
208 Bevis Circle
Huntington, West Virginia 25705
(R.Ph. No. 03-2-15318)

INTRODUCTION

THE MATTER OF JOSEPH M. RUKSE, JR. CAME TO HEARING ON APRIL 5, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JOSEPH MARTIN RUKSE, JR. WAS REPRESENTED BY ROBERT D. NOBLE, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) None

Respondent's Witnesses:

- (1) Joseph Martin Rukse, Jr., R.Ph., Respondent
- (2) Darlene Rukse, Wife of Respondent
- (3) Larry Edge, R.Ph.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter dated December 30, 1998.
- (2) Exhibit 1A--Hearing Request letter dated January 12, 1999.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated January 21, 1999.
- (4) Exhibit 1C--Copy of Pharmacist File Front Sheet of Joseph Martin Rukse, Jr. showing original date of registration as September 27, 1983, and two-page copy of Renewal Application for Pharmacist License, No. 03-2-15318, for a license to practice pharmacy in Ohio from September 15, 1998, to September 15, 1999, of Joseph Martin Rukse, Jr. dated September 15, 1998.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated March 10, 1999.
- (6) Exhibit 1E--Copy of Hearing Schedule letter dated March 23, 1999.
- (7) Exhibit 2--Three-page copy of Kmart Loss Control Report of Investigation regarding Joseph Rukse dated March 1, 1997.
- (8) Exhibit 3--Certified copy of the following: Judgement Entry Plea and Sentencing in the Lawrence County Municipal Court, State of Ohio vs. Joseph Rukse, Case No. 97CRA 393, dated June 2, 1997; Complaint by Prosecuting Attorney Upon Affidavit in the Lawrence County Municipal Court, State of Ohio vs. Joseph Rukse, Case No. 97CRA 393, dated April 32 (*sic* May 2), 1997; and Criminal Affidavit of Joseph M. Butcher signed and notarized on April 29, 1997.
- (9) Exhibit 4--Copy of Rule 5 - Standard Rules of Probation in the Lawrence County Municipal Court.
- (10) Exhibit 5--Copy of front side of Renewal Application for Pharmacist License, No. 03-2-15318, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Joseph M. Rukse dated July 15, 1997.
- (11) Exhibit 5A--Copy of Complaint in the Franklin County Municipal Court in the matter of Joseph M. Rukse, Jr., Case No. 13821, dated May 28, 1998.
- (12) Exhibit 6--Three-page certified copy of Sentencing Entry in the Franklin County Municipal Court, State of Ohio, City of Columbus, Ohio, v. Rukse, Case No. 98/013821 dated November 24, 1998.

Respondent's Exhibits:

- (1) Exhibit A--Education and Employment History of Joseph Martin Rukse, Jr. dated from 1972, to present.
- (2) Exhibit B--Copy of letter from David L. Hatfield dated March 1, 1999.
- (3) Exhibit C--Copy of letter from K. Paul St. Germain dated February 25, 1999.
- (4) Exhibit D--Copy of letter from Jerry Frame dated February 23, 1999.

- (5) Exhibit E--Copy of letter from Diane Varney dated February, 1999.
- (6) Exhibit F--Copy of letter from Larry W. Edge dated March 3, 1999.

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 Joseph Martin Rukse, Jr. was originally licensed in the state of Ohio on September 27, 1983, pursuant to reciprocity, and is currently licensed to practice pharmacy in the State of Ohio.
- (2) Joseph Martin Rukse, Jr. did, from January 20, 1997, through February 26, 1997, with purpose to deprive, knowingly obtain or exert control over property of Kmart Pharmacy #4422 in Chesapeake, Ohio, without consent, to wit: Joseph Martin Rukse, Jr. stole approximately \$879.22 in cash and merchandise from his employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (3) Joseph Martin Rukse, Jr. was, on or about June 2, 1997, convicted of theft, in violation of Section 2913.02 of the Ohio Revised Code, a misdemeanor of the first degree. State of Ohio vs. Joseph Rukse, Case No. 97CRA 393, Lawrence County Municipal Court.
- (4) Joseph Martin Rukse, Jr. did, on or about July 15, 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: in order to obtain his pharmacy renewal license without repercussions, Joseph Martin Rukse, Jr. lied on his pharmacy renewal application, indicating that he had not been convicted of a felony or misdemeanor within the preceding eighteen months when in fact he had. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.
- (5) On November 24, 1998, Joseph Martin Rukse, Jr. entered a "no contest" plea to the charge of Attempted Falsification, a violation of Section 2923.02 of the Ohio Revised Code, being a misdemeanor of the second degree. State of Ohio vs. Joseph M. Rukse, Case No. 98/013821, Franklin County Municipal Court.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (5) 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.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3) and (5) of the Findings of Fact constitute having been convicted of a misdemeanor related to, or committed in, the practice of pharmacy as provided in Division (A)(4) of Section 4729.16 of the Ohio Revised Code.

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 Joseph Martin Rukse, Jr.:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card, No. 03-2-15318, held by Joseph Martin Rukse, Jr. for 42 months, and such suspension is effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Joseph Martin Rukse, Jr. may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs while his license is under active suspension.

(B) Further, the Board will stay 36 months of the suspension and place the pharmacist identification card on probation during the 36-month stay. The terms of probation are as follows:

- (1) The State Board of pharmacy hereby declares that Joseph Martin Rukse Jr.'s pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.
- (2) Joseph Martin Rukse Jr. may not serve as a responsible pharmacist.
- (3) Joseph Martin Rukse Jr. must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (4) Joseph Martin Rukse Jr. must abide by the rules of the Ohio State Board of Pharmacy.
- (5) Joseph Martin Rukse Jr. 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.

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

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Repke and approved by the Board (Aye-6/Nay-1).

4:10 p.m.

The meeting was recessed until Tuesday, April 6, 1999.

TUESDAY, APRIL 6, 1999

9:00 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:

Robert B. Cavendish, R.Ph. (Vice-President); Ann D. Abele, R.Ph.; Paul F. Lamping, R.Ph.; Suzanne L. Neuber, R.Ph.; Ruth A. Plant, R.Ph.; and Nicholas R. Repke, Public Member.

9:02 a.m.

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

9:08 a.m.

RES. 99-166 Mr. Littlejohn arrived. The Executive Session ended and the meeting was opened to the public. Mr. Lamping moved that the Board deny the settlement offer received in the matter

of Michael Joseph Frost. The motion was seconded by Ms. Abele and approved by the Board (Aye-6/Nay-0/Abstain-1[Littlejohn]).

9:10 p.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of James Brian Bird, Bolivar, Ohio.

11:55 p.m.

The hearing concluded and the record was closed. The Board took a recess for lunch.

1:00 p.m.

RES. 99-167

All of the Board members, with the exception of Mrs. Adelman and President Maslak, reconvened in Room 1919 for the purpose of meeting with the candidates for licensure by reciprocity. Following presentations by Board members and self-introductions by the candidates for licensure by reciprocity, Mr. Littlejohn moved that the Board approve the following candidates for licensure. The motion was seconded by Mr. Lamping and approved by the Board (Aye-7/Nay-0).

CIUFO, NICOLE	03-2-23485	KENTUCKY
COURTNEY, RAY D.	03-2-23502	NORTH CAROLINA
CRAIG, JOAN MARIE	03-2-23426	CONNECTICUT
HOLDER, MICHAEL KEVIN	03-2-23471	TENNESSEE
LECHMAN-HOLDER, MICHELLE SUZANE	03-2-23472	TENNESSEE
MIGLIN, SCOTT THOMAS	03-2-23470	MISSOURI
MISHRA, NITU	03-2-23465	KENTUCKY
MYERS, SCOTT LOUIS	03-2-23483	COLORADO
NOTTE, JOSEPH A.	03-2-23477	PENNSYLVANIA
RECKER, BARBARA ANN	03-2-23457	INDIANA
RIVENBARK, GROVER H.	03-2-23460	ARKANSAS
SCHMITT, JEFFREY GEORGE	03-2-23433	PENNSYLVANIA
WANEK, PHILIP MORGAN	03-2-23459	MONTANA

1:24 p.m.

The Board reconvened in Room 1914 to continue with the business of the Board. Mr. Lamping moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against licensees and registrants pursuant to Section 121.22(G)(1) of the Revised Code.. Ms. Abele seconded the motion. Vice-President Cavendish then conducted the following roll call vote: Abele-Yes, Cavendish-Yes, Lamping-Yes, Littlejohn-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

1:30 p.m.

RES. 99-168

The Executive Session ended and the meeting was opened to the public. Mrs. Neuber moved that the Board adopt the following Order in the matter of James Brian Bird:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-981020-022)

In The Matter Of:

JAMES BRIAN BIRD
1681 Maple Square, NE
Bolivar, Ohio 44612
(D.O.B. 1/4/57)

INTRODUCTION

THE MATTER OF JAMES BRIAN BIRD CAME TO HEARING ON APRIL 6, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JAMES BRIAN BIRD WAS REPRESENTED BY WAYNE KEREK, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) David Gallagher, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) James Brian Bird, Respondent
- (2) Kent Douglas Potts, R.Ph., Pharmacists Rehabilitation Organization, Inc.
- (3) Mimi Bird, Wife of Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of six-page Notice of Opportunity for Hearing letter dated October 20, 1998.
- (2) Exhibit 1A--Two-page Hearing Request letter dated November 16, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated November 20, 1998.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated November 24, 1998.
- (5) Exhibit 1D--Application for Examination as a Pharmacist of James Brian Bird signed and notarized on September 23, 1998.
- (6) Exhibit 2A-- Copy of nineteen-page Indictment for Sixty-Five Counts Trafficking in Drugs in the Court of Common Pleas of Tuscarawas County, Ohio, The State of Ohio vs. James Brian Bird, Case No. 93CR040098, dated April 28, 1993.
- (7) Exhibit 2B--Copy of three-page Judgment Entry on Change of Plea in the Court of Common Pleas of Tuscarawas County, The State of Ohio v. James Brian Bird, Case No. 93CR040098, dated December 22, 1993.
- (8) Exhibit 2C--Copy of three-page Judgment Entry on Sentencing in the Court of Common Pleas of Tuscarawas County, The State of Ohio v. James Brian Bird, Case No. 93CR040098, dated February 23, 1994.
- (9) Exhibit 3--Copy of twelve-page Order of the State Board of Pharmacy, Docket No. D-930429-084, in the matter of James Brian Bird, R.Ph. dated March 14, 1994.
- (10) Exhibit 4--Six-page copy of eight newspaper articles as follows: "Pharmacist due arraignment", *The Repository*, May 5, 1993; "Pharmacist charged with trafficking", *The Times Reporter*, May 1, 1993; "Pills for pot" *The Times Reporter*, January 26, 1994; "Suit filed in case against pharmacist", *The Times Reporter*, January 15, 1994; "3 ordered to attend hearing", *The Times Reporter*, January 20, 1994; "Former customer of drug store set to serve jail time", *The Times Reporter*, June 8, 1994; "Convicted pharmacist wants license back" *The Times Reporter*, December 18, 1996; and "Dover attorney fires back", *The Times Reporter*, January 28, 1994.
- (11) Exhibit 5--Copy of two-page handwritten statement of J. Brian Bird signed and notarized on February 22, 1993.
- (12) Exhibit 6--Copy of handwritten statement of Robert Burgess signed and notarized on April 30, 1993.
- (13) Exhibit 7--Copy of two-page handwritten statement of Jean L. Lahmers signed and notarized on March 2, 1993.
- (14) Exhibit 8--Copy of ten-page Order of the State Board of Pharmacy, Docket No. D-970117-025, in the matter of James Brian Bird dated September 11, 1997.

Respondent's Exhibits:

- (1) Exhibit A--Copy of letter from Terry Hart dated January 27, 1999.
- (2) Exhibit B--Copy of letter from Bruce Hensley dated February 2, 1999.
- (3) Exhibit C--Copy of two-page letter from Bruce Hensley dated June 24, 1997.
- (4) Exhibit D--Copy of Affidavit of Patricia A. Schott signed and notarized on February 2, 1999.
- (5) Exhibit E1--Four-page copy of urine drug screen report of Brian Bird dated September 16, 1997.
- (6) Exhibit E2--Four-page copy of urine drug screen report of Brian Bird dated September 28, 1997.

- (7) Exhibit E3--Four-page copy of urine drug screen report of Brian Bird dated December 8, 1997.
- (8) Exhibit E4--Four-page copy of urine drug screen report of Brian Bird dated January 30, 1998.
- (9) Exhibit E5--Four-page copy of urine drug screen report of Brian Bird dated February 21, 1998.
- (10) Exhibit E6--Four-page copy of urine drug screen report of Brian Bird dated March 13, 1998.
- (11) Exhibit E7--Four-page copy of urine drug screen report of Brian Bird dated May 14, 1998.
- (12) Exhibit E8--Four-page copy of urine drug screen report of Brian Bird dated June 13, 1998.
- (13) Exhibit E9--Four-page copy of urine drug screen report of Brian Bird dated July 29, 1998.
- (14) Exhibit E10--Four-page copy of urine drug screen report of Brian Bird dated August 21, 1998.
- (15) Exhibit E11--Four-page copy of urine drug screen report of Brian Bird dated October 7, 1998.
- (16) Exhibit E12--Four-page copy of urine drug screen report of Brian Bird dated December 1, 1998.
- (17) Exhibit E13--Four-page copy of urine drug screen report of Brian Bird dated January 30, 1999.
- (18) Exhibit E14--Four-page copy of urine drug screen report of Brian Bird dated March 28, 1999.
- (19) Exhibit F1--Copy of meeting attendance verification dated from August 18, 1997, through August 24, 1997.
- (20) Exhibit F2--Copy of meeting attendance verification dated from August 25, 1997, through August 31, 1997.
- (21) Exhibit F3--Copy of meeting attendance verification dated from September 1, 1997, through September 7, 1997.
- (22) Exhibit F4--Copy of meeting attendance verification dated from September 8, 1997, through September 14, 1997.
- (23) Exhibit F5--Copy of meeting attendance verification dated from September 15, 1997, through September 21, 1997.
- (24) Exhibit F6--Copy of meeting attendance verification dated from September 22, 1997, through September 28, 1997.
- (25) Exhibit F7--Copy of meeting attendance verification dated from September 29, 1997, through October 5, 1997.
- (26) Exhibit F8--Copy of meeting attendance verification dated from October 6, 1997, through October 12, 1997.
- (27) Exhibit F9--Copy of meeting attendance verification dated from October 13, 1997, through October 19, 1997.
- (28) Exhibit F10--Copy of meeting attendance verification dated from October 20, 1997, through October 26, 1997.
- (29) Exhibit F11--Copy of meeting attendance verification dated from October 27, 1997, through November 2, 1997.
- (30) Exhibit F12--Copy of meeting attendance verification dated from November 3, 1997, through November 9, 1997.
- (31) Exhibit F13--Copy of meeting attendance verification dated from November 10, 1997, through November 16, 1997.
- (32) Exhibit F14--Copy of meeting attendance verification dated from November 17, 1997, through November 23, 1997.
- (33) Exhibit F15--Copy of meeting attendance verification dated from November 24, 1997, through November 30, 1997.
- (34) Exhibit F16--Copy of meeting attendance verification dated from December 1, 1997, through December 7, 1997.
- (35) Exhibit F17--Copy of meeting attendance verification dated from December 8, 1997, through December 14, 1997.
- (36) Exhibit F18--Copy of meeting attendance verification dated from December 15, 1997, through December 21, 1997.
- (37) Exhibit F19--Copy of meeting attendance verification dated from December 22, 1997, through December 28, 1997.
- (38) Exhibit F20--Copy of meeting attendance verification dated from December 29, 1997, through January 4, 1998.

- (39) Exhibit F21--Copy of meeting attendance verification dated from January 5, 1998, through January 11, 1998.
- (40) Exhibit F22--Copy of meeting attendance verification dated from January 12, 1998, through January 18, 1998.
- (41) Exhibit F23--Copy of meeting attendance verification dated from January 19, 1998, through January 25, 1998.
- (42) Exhibit F24--Copy of meeting attendance verification dated from January 26, 1998, through February 1, 1998.
- (43) Exhibit F25--Copy of meeting attendance verification dated from February 2, 1998, through February 8, 1998.
- (44) Exhibit F26--Copy of meeting attendance verification dated from February 9, 1998, through February 15, 1998.
- (45) Exhibit F27--Copy of meeting attendance verification dated from February 16, 1998, through February 22, 1998.
- (46) Exhibit F28--Copy of meeting attendance verification dated from February 23, 1998, through March 1, 1998.
- (47) Exhibit F29--Copy of meeting attendance verification dated from March 2, 1998, through March 8, 1998.
- (48) Exhibit F30--Copy of meeting attendance verification dated from March 9, 1998, through March 15, 1998.
- (49) Exhibit F31--Copy of meeting attendance verification dated from March 16, 1998, through March 22, 1998.
- (50) Exhibit F32--Copy of meeting attendance verification dated from March 23, 1998, through March 29, 1998.
- (51) Exhibit F33--Copy of meeting attendance verification dated from March 30, 1998, through April 5, 1998.
- (52) Exhibit F34--Copy of meeting attendance verification dated from April 6, 1998, through April 12, 1998.
- (53) Exhibit F35--Copy of meeting attendance verification dated from April 13, 1998, through April 19, 1998.
- (54) Exhibit F36--Copy of meeting attendance verification dated from April 20, 1998, through April 26, 1998.
- (55) Exhibit F37--Copy of meeting attendance verification dated from April 27, 1998, through May 3, 1998.
- (56) Exhibit F38--Copy of meeting attendance verification dated from May 4, 1998, through May 10, 1998.
- (57) Exhibit F39--Copy of meeting attendance verification dated from May 11, 1998, through May 17, 1998.
- (58) Exhibit F40--Copy of meeting attendance verification dated from May 18, 1998, through May 24, 1998.
- (59) Exhibit F41--Copy of meeting attendance verification dated from May 25, 1998, through May 31, 1998.
- (60) Exhibit F42--Copy of meeting attendance verification dated from June 1, 1998, through June 7, 1998.
- (61) Exhibit F43--Copy of meeting attendance verification dated from June 8, 1998, through June 14, 1998.
- (62) Exhibit F44--Copy of meeting attendance verification dated from June 15, 1998, through June 21, 1998.
- (63) Exhibit F45--Copy of meeting attendance verification dated from June 22, 1998, through June 28, 1998.
- (64) Exhibit F46--Copy of meeting attendance verification dated from June 29, 1998, through July 5, 1998.
- (65) Exhibit F47--Copy of meeting attendance verification dated from July 6, 1998, through July 12, 1998.
- (66) Exhibit F48--Copy of meeting attendance verification dated from July 13, 1998, through July 19, 1998.
- (67) Exhibit F49--Copy of meeting attendance verification dated from July 20, 1998, through July 26, 1998.
- (68) Exhibit F50--Copy of meeting attendance verification dated from July 27, 1998, through August 2, 1998.
- (69) Exhibit F51--Copy of meeting attendance verification dated from August 3, 1998, through August 9, 1998.
- (70) Exhibit F52--Copy of meeting attendance verification dated from August 10, 1998, through August 16, 1998.

- (71) Exhibit F53--Copy of meeting attendance verification dated from August 17, 1998, through August 23, 1998.
- (72) Exhibit F54--Copy of meeting attendance verification dated from August 24, 1998, through August 30, 1998.
- (73) Exhibit F55--Copy of meeting attendance verification dated from August 31, 1998, through September 6, 1998.
- (74) Exhibit F56--Copy of meeting attendance verification dated from September 7, 1998, through September 13, 1998.
- (75) Exhibit F57--Copy of meeting attendance verification dated from September 14, 1998, through September 20, 1998.
- (76) Exhibit F58--Copy of meeting attendance verification dated from September 21, 1998, through September 27, 1998.
- (77) Exhibit F59--Copy of meeting attendance verification dated from September 28, 1998, through October 4, 1998.
- (78) Exhibit F60--Copy of meeting attendance verification dated from October 5, 1998, through October 11, 1998.
- (79) Exhibit F61--Copy of meeting attendance verification dated from October 12, 1998, through October 18, 1998.
- (80) Exhibit F62--Copy of meeting attendance verification dated from October 19, 1998, through October 25, 1998.
- (81) Exhibit F63--Copy of meeting attendance verification dated from October 26, 1998, through November 1, 1998.
- (82) Exhibit F64--Copy of meeting attendance verification dated from November 2, 1998, through November 8, 1998.
- (83) Exhibit F65--Copy of meeting attendance verification dated from November 9, 1998, through November 15, 1998.
- (84) Exhibit F66--Copy of meeting attendance verification dated from November 16, 1998, through November 22, 1998.
- (85) Exhibit F67--Copy of meeting attendance verification dated from November 23, 1998, through November 29, 1998.
- (86) Exhibit F68--Copy of meeting attendance verification dated from November 30, 1998, through December 6, 1998.
- (87) Exhibit F69--Copy of meeting attendance verification dated from December 7, 1998, through December 13, 1998.
- (88) Exhibit F70--Copy of meeting attendance verification dated from December 14, 1998, through December 20, 1998.
- (89) Exhibit F71--Copy of meeting attendance verification dated from December 21, 1998, through December 27, 1998.
- (90) Exhibit F72--Copy of meeting attendance verification dated from December 28, 1998, through January 3, 1999.
- (91) Exhibit F73--Copy of meeting attendance verification dated from December 28, 1998, through January 3, 1999.
- (92) Exhibit F74--Copy of meeting attendance verification dated from January 4, 1999, through January 10, 1999.
- (93) Exhibit F75--Copy of meeting attendance verification dated from January 11, 1999, through January 17, 1999.
- (94) Exhibit F76--Copy of meeting attendance verification dated from January 18, 1999, through January 24, 1999.
- (95) Exhibit F77--Copy of meeting attendance verification dated from January 25, 1999, through January 31, 1999.
- (96) Exhibit F78--Copy of meeting attendance verification dated from February 1, 1999, through February 7, 1999.
- (97) Exhibit F79--Copy of meeting attendance verification dated from February 8, 1999, through February 14, 1999.
- (98) Exhibit F80--Copy of meeting attendance verification dated from February 15, 1999, through February 21, 1999.
- (99) Exhibit F81--Copy of meeting attendance verification dated from February 22, 1998, through February 28, 1999.
- (100) Exhibit F82--Copy of meeting attendance verification dated from March 1, 1999, through March 7, 1999.
- (101) Exhibit F83--Copy of meeting attendance verification dated from March 8, 1999, through March 14, 1999.
- (102) Exhibit F84--Copy of meeting attendance verification dated from March 15, 1999, through March 21, 1999.

- (103) Exhibit F85--Copy of meeting attendance verification dated from March 22, 1999, through March 28, 1999.
- (104) Exhibit G1--Copy of letter from James Brian Bird addressed to Kim Metcalf dated March 5, 1999.
- (105) Exhibit G2--Copy of letter from James Brian Bird addressed to Sharon Duda dated March 17, 1999.
- (106) Exhibit G3--Copy of letter from James Brian Bird addressed to Robert Burgess dated March 19, 1999.
- (107) Exhibit G4--Copy of letter from James Brian Bird addressed to Jean Lahmers dated March 7, 1999.
- (108) Exhibit G5--Copy of letter from James Brian Bird addressed to Linda Hanner dated March 3, 1999.
- (109) Exhibit H1--Copy of certification of continuing pharmacy education credit of James Bird for program number 105-999-98-702-H01 dated February 16, 1999.
- (110) Exhibit H2--Copy of certification of continuing pharmacy education credit of James Bird for program number 105-999-98-703-H01 dated February 16, 1999.
- (111) Exhibit H3--Copy of certification of continuing pharmacy education credit of James Bird for program number 105-999-98-704-H01 dated February 16, 1999.
- (112) Exhibit H4--Copy of certification of continuing pharmacy education credit of James Bird for program number 105-999-98-705-H01 dated February 16, 1999.
- (113) Exhibit I1--Copy of letter from Rev. Michael Nimocks dated March 20, 1999.
- (114) Exhibit I2--Copy of letter from Jim Brearley dated March 26, 1999.
- (115) Exhibit I3--Copy of letter from Albert I. Weinstein dated March, 1999 (date illegible).
- (116) Exhibit I4--Copy of letter from Kent D. Potts dated March 1, 1999.
- (117) Exhibit I5--Copy of letter from Joseph C. Salmen dated February 16, 1999.
- (118) Exhibit I6--Copy of letter from Scott Bernhard dated March 17, 1999.
- (119) Exhibit I7--Copy of letter from Michael Johnson dated March 21, 1999.
- (120) Exhibit I8--Copy of letter from Douglas Boyd, not dated.
- (121) Exhibit I9--Copy of letter from Mimi Bird dated March 24, 1999.
- (122) Exhibit I10--Copy of letter from H. G. McDonnell dated March 30, 1999.

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 indicate that James Brian Bird submitted an Application for Examination as a Pharmacist on or about September 24, 1998.
- (2) Records further indicate that on or about March 14, 1994, the Board found the following to be fact:
 - (a) Records of the State Board of Pharmacy indicate that James Brian Bird was originally licensed to practice pharmacy in the state of Ohio by reciprocity on December 2, 1980, and was summarily suspended on April 29, 1993. Further, James Brian Bird admitted in his testimony that he was the responsible pharmacist during all relevant time periods as stated in the paragraphs below.
 - (b) James Brian Bird did, on or about December 22, 1992, and dates prior thereto, practice pharmacy at the Medicine Shoppe, 555 W. High Street, New Philadelphia, Ohio, when addicted to drugs. James Brian Bird admitted that he abused Percodan, Percocet, Tylox, and their generic equivalents. Thus, James Brian Bird is addicted to or abusing liquor and/or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.
 - (c) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 115 units of Dexedrine 5mg, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.

- (d) James Brian Bird, as the responsible pharmacist did, between August 10, 1991, and December 2, 1992, knowingly sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, a controlled substance in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird and/or a pharmacist under his control sold 172 units of Xanax 0.25mg, a schedule IV controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
- (e) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold, for his own purposes, 65 units of Percodan and/or generic equivalents, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.
- (f) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 755 units of Tylox and/or generic equivalents, and 156 units of Dilaudid 4mg, schedule II controlled substances, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.
- (g) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 300 units of APAP 325mg/Codeine 30mg, and 990ml of Hycodan Syrup, schedule III controlled substances, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.
- (h) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 3,600 units of Diazepam 5mg, a schedule IV controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.
- (i) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding one hundred times the bulk amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 5,645 units of Percocet and/or generic equivalents, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(10) of the Ohio Revised Code.
- (j) James Brian Bird did, between April 30, 1990, and April 30, 1993, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold the following schedule

IV controlled substances without prescriptions and/or without a legitimate medical purpose:

<u>Drug</u>	<u>Quantity</u>
Adipex-P 3.75mg	292
Phentermine 37.5mg	1150
Phentermine 30mg	357

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

(k) James Brian Bird did, between April 30, 1990, and April 30, 1993, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Ohio Revised Code, to wit: James Brian Bird or a pharmacist under his control sold 42 units of Ionimin 30mg, a schedule IV controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.

(l) James Brian Bird did, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: James Brian Bird created false or forged prescriptions in the name of patient Linda Hanner, not authorized by a practitioner for the following dangerous drugs:

<u>Rx No.</u>	<u>Type</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
694394	original	03/05/92	Ceclor 250mg	21
694394	refill	08/07/92	Ceclor 250mg	21
701111	original	06/23/92	Seldane 60mg	20
701111	refill	07/11/92	Seldane 60mg	20
701111	refill	07/27/92	Seldane 60mg	20
701111	refill	08/25/92	Seldane 60mg	15
701111	refill	08/31/92	Seldane 60mg	15
701111	refill	09/11/92	Seldane 60mg	15
701111	refill	10/05/92	Seldane 60mg	15
701111	refill	11/19/92	Seldane 60mg	10
707033	original	10/05/92	Seldane-D	15
707033	refill	10/09/92	Seldane-D	15

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.

(m) James Brian Bird did, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: James Brian Bird created false or forged telephone prescriptions in the name of patient Willard Hanner, not authorized by a practitioner for the following dangerous drugs:

<u>Rx No.</u>	<u>Type</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
667874	original	01/21/91	Colfed A	12
671672	original	03/08/91	Doxycycline 100mg	11
671672	refill	06/27/91	Doxycycline 100mg	11
680953	original	08/08/91	Cipro 500mg	14
680953	refill	08/15/91	Cipro 500mg	14
680953	refill	11/07/91	Cipro 500mg	14
681938	original	08/29/91	Tetracycline-250	40
681938	refill	04/08/92	Tetracycline-250	56
695035	original	03/16/92	Erythromycin-250	40
695035	refill	03/26/92	Erythromycin-250	40
695035	refill	04/02/92	Erythromycin-250	40
701284	original	06/26/92	Cephalexin 250mg	28
701284	refill	10/15/92	Cephalexin 250mg	28
706417	original	09/25/92	Cipro 500mg	14

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.

- (n) James Brian Bird did, from on or about April, 1990, through February, 1993, furnish to another controlled substances when the conduct was not in accordance with Chapters 3719., 4715., 4729., 4731., and/or 4741. of the Ohio Revised Code, to wit: due to illegal sales of Diazepam 5mg, a schedule IV controlled substance, to Jean Lahmers, James Brian Bird caused her to become drug dependent. Such conduct is in violation of Section 2925.02(B) of the Ohio Revised Code.
- (o) James Brian Bird, as the responsible pharmacist did, between August 10, 1991, and December 2, 1992, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, a controlled substance in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird or a pharmacist under his control sold 480ml of Methadone oral solution 5mg/5ml, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
- (p) James Brian Bird, as the responsible pharmacist did, between August 10, 1991, and December 2, 1992, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, controlled substances in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird or a pharmacist under his control sold the following schedule II controlled substances without prescriptions and/or without a legitimate medical purpose:

<u>Drug</u>	<u>Quantity</u>
Methylphenidate 5mg	1,009
Methylphenidate Extended Release 20mg	201

Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.

- (q) James Brian Bird, as the responsible pharmacist did, between April 30, 1990, and April 30, 1993, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, a controlled substance in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird or a pharmacist under his control sold the following controlled substances without prescriptions and/or without a legitimate medical purpose:

<u>Drug</u>	<u>Schedule</u>	<u>Quantity</u>
Methylphenidate 10mg	II	1,118
Xanax 0.5mg	IV	1,208
Xanax 1mg	IV	940

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised.

- (r) James Brian Bird did, on or about December 21, 1993, plead guilty in the Court of Common Pleas of Tuscarawas County, Ohio, to fifteen counts of Trafficking in Drugs, in violation of Section 2925.03(A)(1) of the Ohio Revised Code.

The Board concluded that James Brian Bird was guilty of a felony and gross immorality; guilty of dishonesty and unprofessional conduct in the practice of pharmacy; addicted to and abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy; and 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 Chapters 2925., 3719., or 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code. Therefore, James Brian Bird's license to practice pharmacy in the state of Ohio, No. 03-2-13744, was revoked.

- (3) Records of the Board further indicate that James Brian Bird submitted an Application for Examination as a Pharmacist on or about November 27, 1996, and on September 11, 1997, for the reasons stated in paragraph (2) above, his application was denied.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2)(r) of the Findings of Fact constitutes being guilty of a felony and gross immorality as provided in paragraph (B) of Rule 4729-5-04 of the Ohio Administrative Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2)(r) of the Findings of Fact constitutes having been convicted of violating a state or federal pharmacy or drug law as provided in paragraph (B) of Rule 4729-5-04 of the Ohio Administrative Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2)(a) through (2)(r) of the Findings of Fact constitute not being of good moral character and habits as provided in paragraph (C) of Rule 4729-5-04 of the Ohio Administrative Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2)(b) and (2)(e) of the Findings of Fact constitute being addicted to or abusing liquor or drugs as provided in paragraph (D) of Rule 4729-5-04 of the Ohio Administrative Code.
- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) of the Findings of Fact constitutes having been disciplined by the Ohio State Board of Pharmacy pursuant to Section 4729.16 of the Revised Code as provided in paragraph (E) of Rule 4729-5-04 of the Ohio Administrative Code.

ACTION OF THE BOARD

Pursuant to Section 4729.08 of the Ohio Revised Code and Rule 4729-5-04 of the Ohio Administrative Code, and on the basis of the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby denies the issuance of a certificate of registration or an identification card to practice pharmacy, and therefore, denies the Application for Examination as a Pharmacist submitted by James Brian Bird. Further, James Brian Bird may not submit an Application for Examination as a Pharmacist prior to January 1, 2025.

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 by the Board (Aye-6/Nay-1).

1:35 p.m.

Mrs. Plant left the meeting to attend to personal business.

1:37 p.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Matthew Earl Fisher, Columbus, Ohio.

1:45 p.m.

The Board took a recess from the hearing to review the documentation submitted by Mr. Fisher.

2:00 p.m.

The hearing resumed.

2:46 p.m.

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

2:57 p.m.

The meeting resumed. Mr. Lamping moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against licensees and registrants pursuant to Section 121.22(G)(1) of the Revised Code and to consult with an attorney for the Board pursuant to Section 121.22(G)(3) of the Revised Code.. Mr. Repke seconded the motion. Vice-President Cavendish then conducted the following roll call vote: Abele-Yes, Cavendish-Yes, Lamping-Yes, Littlejohn-Yes, Neuber-Yes, and Repke-Yes.

3:30 p.m.

RES. 99-169 The Executive Session ended and the meeting was opened to the public. Mrs. Neuber moved that the Board adopt the following Order in the matter of Matthew Earl Fisher:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-980820-008)

In The Matter Of:

MATTHEW EARL FISHER, R.Ph.

100 Winding Way, Apt. B
Kenton Hills, Kentucky 41011
(R.Ph. No. 03-2-12681)

INTRODUCTION

THE MATTER OF MATTHEW EARL FISHER CAME TO HEARING ON APRIL 6, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

MATTHEW EARL FISHER WAS REPRESENTED BY DOUGLAS E. GRAFF, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

(1) None

Respondent's Witnesses:

- (1) Matthew E. Fisher, R.Ph., Respondent
- (2) Jerome Bayer, Parenthesis Family Advocates
- (3) Wayne C. Miller, R.Ph.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of five-page Settlement Agreement with the State Board of Pharmacy, in the matter of Matthew Earl Fisher, Docket No. D-971210-025, effective April 6, 1998.
- (2) Exhibit 1A--Hearing Request letter of Matthew Earl Fisher submitted by Douglas E. Graff, Esquire dated August 5, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated August 20, 1998.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated November 25, 1998.

Respondent's Exhibits:

- (1) Exhibit A--Copy of three Weekly Record of Meeting Attendance sheets dated from March 27, 1999, through April 3, 1999.
- (2) Exhibit B--Copy of handwritten summary of Additional Hours Located After March 24, 1999, listed as follows: 332-000-96-005-H01, 322-000-96-006-H01, 014-999-97-057-H01, and 049-999-96-005-L04. Copies of three continuing pharmacy education certificates of participation of Matthew Earl Fisher as follows: 049-999-96-005-L04 dated July 30, 1996; 014-999-97-057-H01 dated August 31, 1997; 057-999-96-088-H01 dated April 3, 1997. Copy of Certificate of Completion for Bone Marrow Transplant Overview dated April 16, 1996.
- (3) Exhibit C--Binder with subsections containing the following: Copy of unfinalized five-page Settlement Agreement With The State Board of Pharmacy in the matter of Matthew Earl Fisher, Docket No. D-971210-025. Section 1: Copies of three letters from Gloria J. Bryan dated March 24, 1999; December 16, 1998, and December 15, 1998. Copy of Talbot Recovery Services at Park Medical Center Release Of Information Concerning Alcohol/Drug Treatment of Matthew Earl Fisher dated March 23, 1999. Copy of two-page Park Medical Center Talbot Recovery Services Policy No. 59 dated for the period August 25, 1995, to August 21, 1997. Copies of seven Talbot Recovery Services at Park Medical Center Continuing Care Program reports of Matthew Earl Fisher dated February 23, 1999; December 9, 1998; October 21, 1998; September 1, 1998; July 28, 1998; June 16, 1998; April 28, 1998. Copy of two-page Talbot Recovery Services at Park Medical Center Continuing Care Plan dated March 3, 1998. Section 2: Copy of Memorandum from Kevin B. Hawkins dated March 25, 1999. Copy of sixteen urine drug screen reports of Matthew Earl Fisher dated March 17, 1999; March 4, 1999; January 27, 1999; December 29, 1998; December 16, 1998; November 25, 1998; November 17, 1998; November 11, 1998; September 3, 1998; August 21, 1998; August 19, 1998; July 27, 1998; June 12, 1998; May 22, 1998; April 29, 1998, and March 17, 1998. Copy of completed Breath Alcohol Testing Form dated November 16, 1998. Section 3: Copies of two letters as follows: from David W. Baker dated March 28, 1999 and from Wayne C. Miller dated March 22, 1999. Copy of two-page Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of Matthew Earl Fisher dated April 6, 1998. Copy of Pharmacists Helping Fellow Pharmacists Rehabilitation Contract of Matthew Earl Fisher dated October 31, 1998. Section 4: Copy of thirty-four pages of meeting attendance records dated from December 13, 1997, through March 23, 1999. Section 5: Copy of three-page handwritten summary of continuing pharmacy education courses listed as follows: 014-999-96-122-H04, 022-00098128-L01, 022-00098140-L03, 022-00098159-L04, 022-0098139-L01, 057-999-96-009-H01, 057-999-97-077-H01, 057-999-96-088-H01, 424-999-97-010-H01, 071-000-96-007-H01, 332-000-96-001-H03, 332-000-96-002-H01, 057-999-96-016-H01, 332-000-96-003-H01, 332-000-96-004-H01, 202-000-96-010-H01, 415-000-98-006-H01, 032-999-98-008-H01, 202-000-96-027-H04, 202-000-96-026-H04, and 202-000-96-025-H04. Copies of three pages of continuing education certificates of Matthew Earl Fisher as follows: C.H.S. No. 1100-479-S dated August 3, 1998; Certificate No. 136059 listing A.C.P.E. Program Nos. 022-00098128L01 dated September 10, 1998, 022-00098140L03 dated September 11, 1998, 022-00098159L04 dated September 10, 1998, and 022-00098139L01 dated September 10, 1998; and three copies of A.C.P.E. I.D. No. 014-999-96-122-H04 dated June 30, 1997. Section 6: Copy of six letters as follows: from Thomas W. Ashleman dated March 19, 1999; Jerome Bayer dated March 22, 1999; John F. Richard, not dated; Greg Jacob dated March 22, 1999; Thomas L. Geraci dated March 23, 1999; and Doug Ingle, not dated. Section 7: Copy of Letter from Michael A. Moné dated July 29, 1998 and copy of five-page Kentucky Board of Pharmacy Order on Reinstatement of Matthew E. Fisher dated September 11, 1998. Section 8: Copy of three letters as follows: from Robert J. Dougherty dated August 19, 1998; Benjamin P. Kelch dated August 19, 1998; and Thomas C. Harris, not dated. Section 9: Copy of letter from Matthew Earl Fisher addressed to Rosanne Markin dated September 25, 1998.

FINDING 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) Matthew Earl Fisher has not complied with the terms set forth in the Settlement Agreement with the Ohio State Board of Pharmacy, Docket No. D-971210-025, effective April 6, 1998.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy denies the reinstatement petition of Matthew Earl Fisher. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Matthew Earl Fisher may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs while his license is suspended.

- (A) December 1, 1999, or thereafter, the Board will consider any petition filed by Matthew Earl Fisher for a hearing, pursuant to Revised Code Chapter 119., upon the question of the reinstatement of his license to practice pharmacy in Ohio.
- (B) The Board will consider the reinstatement of the license only if the following conditions have been met:
 - (1) Matthew Earl Fisher must maintain his current contract with the Pharmacists Rehabilitation Organization, Inc.
 - (a) Random, observed urine drug screens shall be conducted at least every month. The urine sample must be given within eight hours of notification. The urine drug screen must report testing for alcohol, hydrocodone, and other drugs of abuse; and, the testing must be performed within 48 hours from the time the sample is given. The urine drug screen must also report testing for creatinine or specific gravity of the sample as the dilutional standard;
 - (b) Regular attendance, at least three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meetings, and at meetings of a professional support group, is required during outpatient treatment and/or during aftercare; and
 - (c) The program shall immediately report to the Board of Pharmacy any positive urine screens and/or other violations of the contract.
 - (2) Matthew Earl Fisher, upon petitioning the Board for reinstatement, must provide written documentation from the treatment provider(s) regarding compliance with the program(s), and copies of all urine screen reports.

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Littlejohn and approved by the Board (Aye-5/Nay-1).

3:40 p.m.

RES. 99-170 Ms. Abele moved that the continuing education program submitted by University Consultants be returned to them for revision and resubmission before the Board would consider approving the course to be used as Board-approved jurisprudence. The motion was seconded by Mr. Littlejohn and approved by the Board (Aye-6/Nay-0).

RES. 99-171 Mr. Winsley and Mr. Benedict then discussed a letter submitted by Allscripts describing the procedures to be used when faxing prescriptions from a computer system in a doctor's office to pharmacies in the area. The system involved using a special design in the background that would be difficult to duplicate. The Board felt that the procedure would be able to be approved, but that Ohio Administrative Code Rule 4729-5-30 would need to be

revised to remove the requirement for the manual signature of the physician on the fax prescription in unique circumstances such as this.

Mr. Lamping and Mr. Repke discussed the Utah program on drug abuse that is offered each year. This year's program will be held June 20-25, 1999. Mr. Repke offered to provide information on the program to any interested Board member.

4:07 p.m.

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

PER DIEM	<u>4/5</u>	<u>4/6</u>	<u>Total</u>
Abele	1	1	2
Adelman	-	-	0
Cavendish	1	1	2
Lamping	1	1	2
Littlejohn	1	1	2
Maslak	-	-	0
Neuber	1	1	2
Plant	1	1	2
Repke	1	1	2

The motion was seconded by Mr. Lamping and approved by the Board (Aye-6/Nay-0).

4:08 p.m.

Mr. Cavendish moved that the meeting be adjourned. The motion was seconded by Mr. Repke and approved (Aye-6/Nay-0).

/s/ Robert B. Cavendish
Robert B. Cavendish, Vice-President

/d/ May 4, 1999
Date

/s/ W T Winsley
William T. Winsley, Executive Director