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## **Minutes of the January 10- 12, 2011** **Meeting of the Ohio State Board of Pharmacy**

### **Monday, January 10, 2011**

- 10:04 a.m. The Ohio State Board of Pharmacy convened in Room East B, 31<sup>st</sup> Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:
- Richard F. Kolezynski, R.Ph., *President*; Donald M. Casar, R.Ph.; *Vice-President*; Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Deborah A. Lange, R.Ph.; and Jerome J. Wiesenhahn, R.Ph.
- Also present were William T. Winsley, *Executive Director*; Timothy Benedict, *Assistant Executive Director*; Mark Keeley, *Legislative Affairs Administrator*; Kyle Parker, *Licensing Administrator*; Chris Reed, *Compliance Supervisor*; David Rowland, *Legal Affairs Administrator*; Danna Droz, *Prescription Drug Monitoring Program Director*; and Tracy Greuel, *Assistant Attorney General*.
- 10:06 a.m. Mr. Joyce moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code and to confer with an attorney for the Board regarding pending or imminent court action pursuant to Section 121.22(G)(3) of the Ohio Revised Code. The motion was seconded by Mr. Gahm and a roll-call vote was conducted by President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Joyce – *yes*; Lange – *yes*; and Wiesenhahn – *yes*.
- 11:43 a.m. The Executive Session ended and the meeting was opened to the public.
- R-2011-130** Mr. Joyce moved that the Board accept a settlement offer in the matter of **Mary Anne Casey**, R.Ph. (03-3-22059) Uniontown, Ohio, as amended by the Board. The Board's acceptance of a settlement would be contingent on the respondent's agreeing to the changes made by the Board. The motion was seconded by Mr. Gahm and approved by the Board: *Aye* – 5; *Abstain* – Casar.
- Mr. Keeley presented the Legislative Report.
- Mr. Keeley announced that the Ohio Pharmacist Association annual licensure ceremony is scheduled for October 22, 2011.
- Ms. Lange and Mr. Keeley discussed the Technician Exam Status Report with the Board.
- Mrs. Droz presented the Ohio Automated Prescription Reporting System update.
- R-2011-131** Mr. Keeley presented a request from **Leshay Nicole Wesson**, R.Ph. (03-2-30127) score-transfer candidate, for a time extension concerning the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE) to be approved due to extenuating circumstances, beyond her control. After discussion, Mr. Casar moved that the request be approved. The motion was seconded by Mr. Gahm and approved by the Board: *Aye* – 6.
- 12:05 p.m. The Board recessed for lunch.

- 1:13 p.m. The meeting reconvened with all members present.  
The Board discussed comments received on the new prescription transfer rule (4729-5-24).
- 1:28 p.m. The Board recessed briefly and Mr. Joyce left for personal reasons.
- 1:38 p.m. The Board was joined by Assistant Attorney General Tracy Greuel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **M. Susan McDaniel**, R.Ph. (03-3-14278) Circleville, Ohio.
- 3:58 p.m. The hearing ended and the record was closed.
- 3:59 p.m. Ms. Lange moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Casar and a roll-call vote was conducted by President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Lange – *yes*; and Wiesenhahn – *yes*.
- 4:14 p.m. The Executive Session ended and the meeting was opened to the public.
- 4:16 p.m.  
**R-2011-132** After votes were taken in public session, the Board adopted the following order in the matter of **M. Susan McDaniel**, R.Ph. (03-3-14278) Circleville, Ohio.

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

Docket Number D-100614-122

*in the matter of:*

**M. SUSAN McDANIEL, R.Ph.**

1615 Crossing Boulevard  
Circleville, Ohio 43113

R.Ph. Number 03-3-14278

### **INTRODUCTION**

The matter of M. Susan McDaniel came for hearing on January 10, 2011, before the following members of the Board: Richard F. Kolezynski, R.Ph. (*presiding*); Edward T. Cain, Public Member; Donald M. Casar, R.Ph.; Troy A. Gahm, R.Ph.; Deborah A. Lange, R.Ph.; and Jerome J. Wiesenhahn, R.Ph.

Brian M. Joyce, R.Ph., absent

M. Susan McDaniel was represented by Daniel D. Connor. The State of Ohio was represented by Tracy M. Greuel, Assistant Attorney General.

### **SUMMARY OF EVIDENCE**

**State's Witnesses:** John Whittington, R.Ph., D.O., Ohio State Board of Pharmacy  
M. Susan McDaniel, R.Ph., Respondent

**Respondent's Witness:** Gregory McDaniel

**State's Exhibits:**

1. Copy of Notice of Opportunity for Hearing letter [06-14-10]  
1A-1F. Procedurals

2. Notarized written statement from Mary Susan McDaniel [03-11-10]
3. Documentation packet for RX #4402088 [various dates]; Notarized written statement from Patricia A. Mullins, RN [03-04-10]; Notarized written statement from Nancy Alkire, MD [03-04-10]
4. Documentation packet for RX #4460367 [various dates]; Notarized written statement from Nancy Alkire, MD [03-04-10]; Notarized written statement from Margaret E. Parker, RN [03-04-10]
5. Documentation packet for RX #4402399 [various dates]; Notarized written statement from Nancy Alkire, MD [03-04-10]; Notarized written statement from Patricia A. Mullins, RN [03-04-10]
6. Documentation packet for RX #4462895 and RX #4462896 [various dates]; Notarized written statement from Nancy Alkire, MD [03-04-10]; Notarized written statement from Patricia A. Mullins, RN [03-04-10]
7. Documentation packet for RX #4402809 [various dates]; Notarized written statement from Nancy Alkire, MD [03-04-10]; Notarized written statement from Patricia A. Mullins, RN [03-04-10]
8. Documentation packet for RX #4464753 [various dates]; Notarized written statement from Nancy Alkire, MD [03-04-10]; Notarized written statement from Patricia A. Mullins, RN [03-04-10]
9. Documentation packet for RX #7043226 [various dates]; Notarized written statement from Nancy Alkire, MD [03-04-10]; Notarized written statement from Patricia A. Mullins, RN [03-04-10]
10. Documentation packet for RX #4466756 [various dates]; Notarized written statement from Nancy Alkire, MD [03-04-10]; Notarized written statement from Margaret E. Parker, RN [03-04-10]
11. Documentation packet for RX #7011317 [various dates]; Notarized written statement from Nancy Alkire, MD [03-04-10]; Notarized written statement from Patricia A. Mullins, RN [03-04-10]
12. Documentation packet for RX #7018282 [various dates]; Notarized written statement from Nancy Alkire, MD [03-04-10]; Notarized written statement from Patricia A. Mullins, RN [03-04-10]
13. Documentation packet for RX #4402952 [various dates]; Notarized written statement from Nancy Alkire, MD [03-04-10]; Notarized written statement from Patricia A. Mullins, RN [03-04-10]
14. Documentation packet for RX #6622235 and RX #6622234 [various dates]; Notarized written statement from Nancy Alkire, MD [03-04-10]; Notarized written statement from Margaret E. Parker, RN [03-04-10]
15. Documentation packet for RX #7041679 [various dates]; Notarized written statement from Nancy Alkire, MD [03-04-10]
16. Documentation packet for RX #7047984 [various dates]; Notarized written statement from Nancy Alkire, MD [03-04-10]; Notarized written statement from Margaret E. Parker, RN [03-04-10]
17. Medical Expense Summary for Gregory McDaniel, Sr. [01-07-10]
18. Medical Expense Summary for Susan McDaniel [01-07-10]
19. Entry, State of Ohio vs. Mary S. McDaniel, Case No. 10 CR 500, Ross County, Ohio Common Pleas Court [01-03-11]

Respondent's Exhibits:

- A. Copy of PRO Pharmacist's Rehabilitation Organization contract for Mary Susan McDaniel [06-15-10]
- B. The Ohio State University patient medical chart for Mary S. McDaniel [various dates]
- C. Copy of letter from Julie L. Wagar MA LPCC-S, from The Ohio State University Medical Center to Daniel D. Connor, Esq. [10-13-10]; Copy of letter from Carolyn Sellers, MSW from The Ohio State University Medical Center to Daniel D. Connor, Esq. [10-11-10]

- D. Urine drug screens from The Ohio State University Medical Center for Mary S. McDaniel [04-02-10 to 05-11-10]
- E. FirstLab Test History Report for Susan McDaniel [07-23-10 to 12-01-10]; FirstLab Professional Health Monitoring Drug Testing Panels [10-11-06]; FirstLab Test History Report [07-23-10 to 01-05-11]
- F. Group Meeting Attendance records for M. Susan McDaniel [05-24-10 to 01-09-11]
- G. Group Meeting Attendance calendars for M. Susan McDaniel [May 2010 to January 2011]
- H. Entry, State of Ohio vs. Mary S. McDaniel, Case No. 10 CR 500, Ross County, Ohio Common Pleas Court [01-03-11]
- I. Continuing Pharmacy Education Credits and Certificates for M. Susan McDaniel [04-25-10 to 12-08-10]
- J. PRO Pharmacist Rehabilitation Organization Advocate report from Megan Rees, R.Ph., PharmD in re Susan McDaniel [01-01-11]
- K. Ohio Lawyers Assistance Program, Inc., report from Scott R. Mote, Executive Director in re Mary Susan McDaniel with attachments [01-03-11]
- L. Six family letters of support [12-18-10 to 12-27-10]
- M. Seven letters of support [12-11-10 to 01-07-11]

### **FINDINGS OF FACT**

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

- (1) Records of the State Board of Pharmacy indicate that M. Susan McDaniel was originally licensed in the State of Ohio on July 31, 1981, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio.
- (2) M. Susan McDaniel did, on or about November 12, 2008, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #4402088, written for Cheratussin AC Syrup, a Schedule V Controlled Substance, without authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (3) M. Susan McDaniel did, on or about December 4, 2008, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #4460367, written for Ambien 10 mg, a Schedule IV Controlled Substance, without authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (4) M. Susan McDaniel did, on or about February 10, 2009, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #4402399, written for Ambien, a Schedule IV Controlled Substance, without authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (5) M. Susan McDaniel did, on or about April 16, 2009, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #4462895, written for Xanax 0.5 mg, a Schedule IV Controlled Substance, without authorization

from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

- (6) M. Susan McDaniel did, on or about April 16, 2009, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #4462896, written for Ambien 10 mg, a Schedule IV Controlled Substance, without authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (7) M. Susan McDaniel did, on or about June 1, 2009, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #4402809, written for Ambien 10 mg, a Schedule IV Controlled Substance, without authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (8) M. Susan McDaniel did, on or about July 17, 2009, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #4464753, written for Tylenol #3, a Schedule III Controlled Substance, without authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (9) M. Susan McDaniel did, on or about September 16, 2009, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #7043226, written for Lidocaine Viscous 2% Solution, a dangerous drug, without authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (10) M. Susan McDaniel did, on or about October 21, 2009, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #4466756, written for Ambien 10 mg, a Schedule IV Controlled Substance, without authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (11) M. Susan McDaniel did, on or about January 22, 2009, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #7011317, written for Spectazole 1% Cream, a dangerous drug, without authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (12) M. Susan McDaniel did, on or about March 12, 2009, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #7018282, written for Levaquin 500 mg, a dangerous drug, without authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (13) M. Susan McDaniel did, on or about July 14, 2009, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #4402952, written for Ambien 10 mg, a Schedule IV Controlled Substance, without

authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

- (14) M. Susan McDaniel did, on or about July 27, 2009, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #6622234, written for amoxicillin 500 mg, a dangerous drug, without authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (15) M. Susan McDaniel did, on or about July 27, 2009, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #6622235, written for nystatin/triamcinolone cream, a dangerous drug, without authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (16) M. Susan McDaniel did, on or about September 4, 2009, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #7041679, written for triamcinolone 0.1% cream, a dangerous drug, without authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (17) M. Susan McDaniel did, on or about October 21, 2009, intentionally create and/or knowingly possess a false or forged prescription, to wit: M. Susan McDaniel created and kept on file at the pharmacy RX #7047984, written for Mycolog II Cream, a dangerous drug, without authorization from a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

### **CONCLUSIONS OF LAW**

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (17) of the Findings of Fact constitute being guilty of gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraphs (2) through (17) 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) The State Board of Pharmacy concludes that paragraphs (2) through (17) 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.

### **DECISION OF THE BOARD**

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-3-14278, held by M. Susan McDaniel and such suspension is effective as of the date of the mailing of this Order.

- (A) M. Susan McDaniel, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
- (B) M. Susan McDaniel, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return her identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

Further, after fourteen months from the effective date of this Order, the Board will consider any petition filed by M. Susan McDaniel for a hearing, pursuant to Ohio Revised Code Chapter 119., for reinstatement. The Board will only consider reinstatement of the license to practice pharmacy in Ohio if the following conditions have been met:

- (A) M. Susan McDaniel must enter into a **new** contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. The contract must provide that:
  - (1) **Random, observed** urine drug screens shall be conducted at least once each month.
    - (a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.
    - (b) Results of all drug screens must be negative. Refusal of a drug screen or a diluted drug screen is equivalent to a positive result. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.
  - (2) Attendance is required a minimum of three times per calendar week (Sunday through Saturday), at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
  - (3) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (B) M. Susan McDaniel must demonstrate satisfactory proof to the Board that she is no longer addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy.
- (C) M. Susan McDaniel must provide, at the reinstatement petition hearing, documentation of the following:
  - (1) Compliance with the contract required above (e.g.-proof of giving the sample within twelve hours of notification and copies of all drug and alcohol screen reports, meeting attendance records, treatment program reports, etc.);

(2) Compliance with the continuing pharmacy education requirements set forth in Chapter 4729-7 of the Ohio Administrative Code as applicable and in effect on the date of petitioning the Board for reinstatement;

(3) Compliance with the terms of this Order.

(D) If reinstatement is not accomplished within three years of the effective date of this Order, M. Susan McDaniel must also show successful completion of the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination approved by the Board.

Deborah Lange moved for Findings of Fact; Jerome Wiesenhahn seconded the motion. Motion passed (Aye-5/Nay-0).

Troy Gahm moved for Conclusions of Law; Deborah Lange seconded the motion. Motion passed (Aye-5/Nay-0).

Troy Gahm moved for Action of the Board; Jerome Wiesenhahn seconded the motion. Motion passed (Aye-3/Nay-2).

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4:22 p.m. The Board recessed for the day.

## **Tuesday, January 11, 2011**

8:50 a.m. The Ohio State Board of Pharmacy convened in Room East B, 31<sup>st</sup> Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

Richard F. Kolezynski, R.Ph., *President*; Donald M. Casar, R.Ph.; *Vice-President*; Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Deborah A. Lange, R.Ph.; and Jerome J. Wiesenhahn, R.Ph.

9:02 a.m. The Board was joined by Assistant Attorney General Tracy Greuel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Barney T. Dodson**, R.Ph. (03-3-20222) Cincinnati, Ohio.

9:22 a.m. Mr. Casar moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Ms. Lange and a roll-call vote was conducted by President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Lange – *yes*; and Wiesenhahn – *yes*.

9:35 a.m. The Executive Session ended and the meeting was opened to the public. The Board and Mr. Dodson discussed deficiencies in the documentation presented by Mr. Dodson.

9:50 a.m. Mr. Gahm moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Ms. Lange and a roll-call vote was conducted by President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Lange – *yes*; and Wiesenhahn – *yes*.

10:02 a.m. The Executive Session ended and the meeting was opened to the public. President Kolezynski announced that the hearing in the matter of **Barney T. Dodson**, R.Ph. (03-3-20222) Cincinnati, Ohio, would be continued until January 2012.

10:04 a.m. The Board recessed briefly.

- 10:24 a.m. The meeting resumed and the Board was joined by Assistant Attorney General Tracy Greuel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Zackary Daniel Hennekes**, R.Ph. (03-2-23584) Cincinnati, Ohio.
- 11:05 a.m. Mr. Gahm moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Ms. Lange and a roll-call vote was conducted by President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Lange – *yes*; and Wiesenbahn – *yes*.
- 11:20 a.m. The Executive Session ended and the meeting was opened to the public. The hearing in the matter of **Zackary Daniel Hennekes**, R.Ph. (03-2-23584) Cincinnati, Ohio resumed.
- 12:45 p.m. The hearing ended and the record was closed.
- 12:46 p.m. Mr. Gahm moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Ms. Lange and a roll-call vote was conducted by President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Lange – *yes*; and Wiesenbahn – *yes*.
- 12:59 p.m. The Executive Session ended and the meeting was opened to the public.
- R-2011-133** After votes were taken in public session, the Board adopted the following order in the matter of **Zackary Daniel Hennekes**, R.Ph. (03-2-23584) Cincinnati, Ohio.

**ORDER OF THE STATE BOARD OF PHARMACY**

Docket Number D-100630-136

*in the matter of:*

**ZACHARY DANIEL HENNEKES, R.Ph.**

2530 Bremond Avenue  
Cincinnati, Ohio 45237

R.Ph. Number 03-2-23584

**INTRODUCTION**

The matter of Zachary Daniel Hennekes came for hearing on January 11, 2011, before the following members of the Board: Richard F. Kolezynski, R.Ph. (*presiding*); Edward T. Cain, Public Member; Donald M. Casar, R.Ph.; Troy A. Gahm, R.Ph.; Deborah A. Lange, R.Ph.; and Jerome J. Wiesenbahn, R.Ph.

Brian M. Joyce, R.Ph., absent

Zachary Daniel Hennekes was represented by Harry B. Plotnick. The State of Ohio was represented by Tracy M. Greuel, Assistant Attorney General.

**SUMMARY OF EVIDENCE**

State's Witnesses: None

Respondent's Witnesses: Zachary Daniel Hennekes, R.Ph., Respondent  
Jamie Hennekes  
James Liebetrau, R.Ph., PRO Vice President

State's Exhibits:

1. Reinstatement hearing request letter [06-29-10]

1A-1B. Procedurals

2. State Board of Pharmacy Order in re Zachary Daniel Hennekes, R.Ph. [07-13-04]

Respondent's Exhibits:

- A. State Board of Pharmacy Order in re Zachary Daniel Hennekes, R.Ph. [07-13-04]
- B.
- C. Ohio Pharmacists Rehabilitation Organization Licensee Summary Report for Zachary Hennekes [05-05-04 to 08-12-05]; FirstLab Test History Reports for Zachary D. Hennekes [09-21-05 to 10-21-10]; Letter from Tim O'Leary, MT (ASCP) Tri-State Laboratory Services, Inc. [12-10-10]; National Medical Services drug screen lab slip for Zachary D. Hennekes [08-12-05]; Quest diagnostics lab slips [01-22-08 to 08-24-09]; FirstLab Test History Report [09-21-05 to 12-02-10]; E-mail correspondence [09-17-09 to 09-18-09]
- D. Support Group Meeting Attendance records for Zachary D. Hennekes [01-08-04 to 01-08-11]
- E. Continuing Education Credits and Certificates for Zachary D. Hennekes [07-27-03 to 12-06-10]
- F. Letter from Stan Reid, CDCA, Gateways to Harry B. Plotnick, Esq. [11-16-10]; Letter from Timothy J. Benedict, R.Ph., Ohio State Board of Pharmacy [06-18-10]; Two letters from Harry B. Plotnick, Esq. to Pierce Bryant, The Kroger Co. [05-11-09 and 12-28-10]

**FINDINGS OF FACT**

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds that Zachary Daniel Hennekes has complied with the terms set forth in the Order of the State Board of Pharmacy Docket Number D-031224-048, effective July 13, 2004.

**DECISION OF THE BOARD**

On the basis of the Finding of Fact set forth above, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card, Number 03-2-23584, held by Zachary Daniel Hennekes to practice pharmacy in Ohio subject to a period of probation for five years beginning on the effective date of this Order, with the following conditions:

- (A) Zachary Daniel Hennekes must enter into a **new** contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) approved treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and submit a copy of the signed contract to the Board office before his pharmacist identification card is issued. The contract must provide that:
- (1) **Random, observed** urine drug and alcohol screens shall be conducted at least once each month for the first year and then at least once every three months for the remaining four years.
- (a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.

- (b) Alcohol must be added to the standard urine drug screen. A Breathalyzer may be used to test for alcohol, but an appropriately certified individual must conduct the test within twelve hours of notification.
  - (c) Results of all drug and alcohol screens must be negative. Refusal of a urine screen or a diluted urine screen is equivalent to a positive result. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.
- (2) The intervener/sponsor shall submit reports to the Board, in a format acceptable to the Board, indicating drug screens and their results in a timely fashion. Actual copies of drug screens shall be made available to the Board upon request.
  - (3) Attendance is required a minimum of three times per calendar week (Sunday through Saturday), at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
  - (4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (B) Zachary Daniel Hennekes must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10 of each year of probation) that include:
- (1) The written report and documentation provided by the treatment program pursuant to the contract, and
  - (2) A written description of Zachary Daniel Hennekes' progress towards recovery and what Zachary Daniel Hennekes has been doing during the previous three months.
- (C) Other terms of probation are as follows:
- (1) The State Board of Pharmacy hereby declares that Zachary Daniel Hennekes' 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) Zachary Daniel Hennekes may not serve as a responsible pharmacist.
  - (3) Zachary Daniel Hennekes may not destroy, assist in, or witness the destruction of controlled substances.
  - (4) Zachary Daniel Hennekes must abide by the contract with his treatment provider and must immediately report any violation of the contract to the Board.
  - (5) Zachary Daniel Hennekes must not violate the drug laws of Ohio, any other state, or the federal government.
  - (6) Zachary Daniel Hennekes must abide by the rules of the State Board of Pharmacy.

- (7) Zachary Daniel Hennekes must comply with the terms of this Order.
- (8) Zachary Daniel Hennekes' license is deemed not in good standing until successful completion of the probationary period.
- (D) Any violation of probation may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.

Zachary Daniel Hennekes is hereby advised that the Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

Donald Casar moved for Action of the Board; Jerome Wiesenbahn seconded the motion. Motion passed (Aye-5/Nay-0).

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1:02 p.m. The Board recessed briefly.

1:15 p.m. Mr. Casar said there was no report from the Nursing Board Committee on Prescriptive Governance.

Ms. Lange said there was no report from the Medical Board's Physician-Assistant Policy Committee this month.

1:30 p.m. The Board reconvened in Room South A, 31<sup>st</sup> Floor of the Vern Riffe Center. The following candidates for licensure by reciprocity introduced themselves to the Board, and then participated in a discussion of pharmacy laws and rules with Mr. Parker, Licensing Administrator.

Daniel Jay Berky	<i>Pennsylvania</i>
Stacy A. Elliott	<i>Illinois</i>
Jay P. Flemming	<i>Florida</i>
Salma Mohammed Habeeb	<i>Illinois</i>
Carmen M. Knight	<i>Illinois</i>
Ada Zofia Koch	<i>Illinois</i>
Bradley Allen Phillips	<i>West Virginia</i>
Ofori Julius Quarcoo	<i>Georgia</i>
Mansi Prakash Shah	<i>Michigan</i>
Avni Dipak Shah	<i>California</i>
Lalitha Prasad-Rao Thungathurthi	<i>Michigan</i>
Sarah Turner	<i>Indiana</i>

2:20 p.m. The Board recessed for the day.

### **Wednesday, January 12, 2011**

9:08 a.m. The Ohio State Board of Pharmacy convened in Room East B, 31<sup>st</sup> Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

Richard F. Kolezynski, R.Ph., *President*; Donald M. Casar, R.Ph.; *Vice-President*; Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Deborah A. Lange, R.Ph.; and Jerome J. Wiesenbahn, R.Ph.

9:30 a.m.

**R-2011-134** Mr. Casar moved that the Board minutes of December 6-8, 2010, be approved as amended. Ms. Lange seconded the motion and it was approved by the Board: *Aye* – 5.

**R-2011-135** The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-11 (Responsible Person) requesting that **Jon Keeley**, R.Ph. (03-1-14983) Holland, Ohio, be permitted to be the responsible person for the following sites:

**EZ Scripts Pharmacy**, Holland, Ohio (02-2085800)  
**Injury Med Express**, Holland, Ohio (pending)

After discussion, the request was tabled until receipt of further information.

**R-2011-136** The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-11 (Responsible Person) requesting that **Ryan Garst**, R.Ph. (03-1-24549) Richmond Heights, Ohio, be permitted to be the responsible person for the following sites:

**University Hospital Bedford Medical Center**, Bedford, Ohio (02-0774350)  
**University Hospital Richmond Medical Center**, Richmond Heights, Ohio (pending)

After discussion, Mr. Casar moved that the Board approve the request for 60 days. The motion was seconded by Mr. Gahm and approved by the Board: *Aye* – 5.

**R-2011-137** A request to be registered as a Continuing Pharmacy Education provider was received from **Deanna Raye Urasek**, R.Ph. (03-1-24639), (The Jewish Hospital), Cincinnati, Ohio. After discussion, Mr. Gahm moved that the request be approved. Mr. Wiesenhahn seconded the motion and it was approved by the Board: *Aye* – 5.

**R-2011-138** An additional request to be registered as a Continuing Pharmacy Education provider was received from **Mark Thomas Lawrence**, R.Ph. (03-3-17084), Dublin Methodist Hospital, Dublin, Ohio. After discussion, Mr. Casar moved that the request be approved. Ms. Lange seconded the motion and it was approved by the Board: *Aye* – 5.

9:44 a.m. Mr. Gahm moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Ms. Lange and a roll-call vote was conducted by President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Lange – *yes*; and Wiesenhahn – *yes*.

10:24 a.m. The Executive Session ended and the Board recessed briefly.

10:29 a.m. The Executive Session resumed.

**R-2011-139** Ms. Lange moved that the Board summarily suspend the license to practice pharmacy belonging to **Nick Prentice Poore**, R.Ph. (06-0-07560) Springboro, Ohio, pursuant to Ohio Revised Code 3719.121(A). Mr. Gahm seconded the motion and it was approved by the Board: *Aye* – 5.

**R-2011-140** Mr. Gahm moved that the Board summarily suspend the license to practice pharmacy belonging to **Ann Elizabeth Nichols**, R.Ph. (03-3-29130) Pickerington, Ohio, pursuant to Ohio Revised Code 3719.121(A) and (B). Mr. Casar seconded the motion and it was approved by the Board: *Aye* – 5.

**R-2011-141** Mr. Gahm moved that the Board summarily suspend the license to practice pharmacy belonging to **Risa Jo Gethers**, R.Ph. (03-3-27085) West Chester, Ohio, pursuant to Ohio Revised Code 3719.121(A). Ms. Lange seconded the motion and it was approved by the Board: *Aye* – 4; *Nay* – 1.

10:30 a.m. The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

**Central Ohio Compounding Pharmacy**, Columbus, Ohio (02-1050650)  
**Ohio Valley Medical Center**, Springfield, Ohio (02-1955950)

After discussion, Mr. Gahm moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Ms. Lange and approved by the Board: *Aye* – 5.

**R-2011-142** The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

**Leiter's Pharmacy Inc.**, San Jose, California (02-1620150)  
**Lasik Vision Institute**, Columbus, Ohio (02-2018500)  
**Lasik Vision Institute**, West Chester, Ohio (02-2018550)

After discussion, Ms. Lange moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Mr. Cain and approved by the Board: *Aye* – 5.

**R-2011-143** The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

**Leiter's Pharmacy Inc.**, San Jose, California (02-1620150)  
**Cincinnati Eye Institute**, Middletown, Ohio (02-1701250)  
**Cincinnati Eye Institute**, Cincinnati, Ohio (02-1765350)  
**Saint Claire Surgery Center**, Stow, Ohio (02-1024400)  
**Ohio Retina Associates**, Canton, Ohio (NA)

After discussion, Ms. Lange moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Mr. Cain and approved by the Board: *Aye* – 5.

Mr. Winsley and Mr. Parker talked with the Board concerning the process Board staff follows before an electronic prescribing system request is presented to the Board for approval.

11:20 a.m. The Board recessed briefly.

11:26 a.m. Ms. Lange moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Gahm and a roll-call vote was conducted by President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Lange – *yes*; and Wiesenbahn – *yes*.

**R-2011-144** Ms. Lange moved that the settlement offer in the matter of **Heather Leigh Perrin**, R.Ph. (03-1-22493) Mason, Ohio; **Colleen Renee Lindholz**, R.Ph. (03-2-21166) Loveland, Ohio; and **Kroger Pharmacy #14384** (02-1042700) Cincinnati, Ohio, be denied. The motion was seconded by Mr. Gahm and approved by the Board: *Aye* – 4; *Nay* – 1.

12:35 p.m. The Executive Session ended and the meeting was opened to the public.

Mr. Benedict reported on the Medical Board Prescribing Committee meeting.

12:47 p.m. Mr. Gahm moved that the Board receive Per Diem as follows:

<b>PER DIEM</b>	<b>1/10</b>	<b>1/11</b>	<b>1/12</b>	<b>Total</b>
Cain	1	1	1	3
Casar	1	1	1	3
Gahm	1	1	1	3
Joyce	1	-	-	1
Lange	1	1	1	3
Kolezynski	1	1	1	3
Wiesenhahn	1	1	1	3

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

12:47 p.m.

Mr. Wiesenhahn moved that the meeting be adjourned. The motion was seconded by Ms. Lange and approved by the Board: *Aye* – 5.

**The Ohio State Board of Pharmacy  
approved these Minutes February 7, 2011**