

Minutes Of The Meeting

Ohio State Board of Pharmacy
Columbus, Ohio

January 22, 23, 24, 25, 26, 1996

MONDAY, JANUARY 22, 1996

10:20 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:

Paul F. Lamping, R.Ph. (President); Suzanne L. Neuber, R.Ph. (Vice-President); Robert Cavendish, R.Ph.; John Hanna, R.Ph.; Joseph Maslak, R.Ph.; Wayne Miller, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

The Board was joined by Assistant Attorney General Mary Hollern; and staff members Tim Benedict, Robert Cole, and David Rowland. Mrs. Plant moved that the Board go into Executive Session for the purpose of conferring with the Assistant Attorney General regarding pending and imminent court matters and the investigation of complaints against licensees and registrants. The motion was seconded by Mr. Miller and a roll call vote was conducted by President Lamping as follows: Cavendish-Yes, Hanna-Yes, Maslak-Yes, Miller-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

11:25 a.m. The Board was joined by Compliance Agent William Padgett.

11:55 a.m. The Executive Session was recessed until after lunch and the meeting opened to the public. Mrs.

RES. 96-126 Plant moved that the Board summarily suspend the license of Arch Joseph Weber, R.Ph. (03-3-14610) for the reason that there is clear and convincing evidence that the continuation of his professional practice and method of distributing controlled substances presents a danger of immediate and serious harm to others. The motion was seconded by Mrs. Neuber and approved by the Board (Aye-7/Nay-0).

12:00 p.m. The Board recessed for lunch.

1:10 p.m. The Board reconvened the Executive Session.

1:42 p.m. The Executive Session was concluded and the meeting opened to the public. Mr. Repke moved

RES. 96-127 that the request for a continuance in the matter of R.Ph. Richard E. Jarvis be denied. The motion was seconded by Mrs. Plant and approved (Aye-7/Nay-0).

The members present then reviewed administrative reports and matters not requiring official action by the Board.

2:00 p.m. The Board was joined by Assistant Attorney General Mary Hollern for the purpose of creating a record in the matter of Jacops' Catering, Kent, Ohio pursuant to Chapters 119. and 4729. of the Revised Code.

2:24 p.m. The record in the matter was closed.

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- RES. 96-128** The Board was joined by Nancy Little, Licensing Administrator and Computer Systems Manager. Following a report by Nancy Little, Mrs. Plant moved that the Board approve activating the Board of Pharmacy "Home Page" on the Internet. The motion was seconded by Mrs. Neuber and approved by the Board (Aye-7/Nay-0).
- RES. 96-129** Ms. Little presented a request from the Columbus Chapter of the National Pharmaceutical Association (NPHA) for a list of African-American registered pharmacists practicing in Franklin County. The purpose of the request is to recruit members for the Association. Mrs. Neuber moved that the request be approved. The motion was approved (Aye-7/Nay-0) following a second by Mrs. Plant.
- RES. 96-130** The Board then considered the application of Aaron M. Kanas for licensure by reciprocity. Following a review of the Board's records, Mr. Maslak moved that the application be approved and that Mr. Kanas be permitted to sit for the reciprocity hearing on Tuesday, January 23, 1996. The motion was seconded by Mr. Cavendish and approved (Aye-7/Nay-0).
- RES. 96-131** Following a review of the Continuing Education article published by Drug Topics on September 4, 1995 titled "Pharmaceutical Care and the Law", Mr. Cavendish moved that the Board approve the article for continuing pharmacy education credit in jurisprudence. The motion was seconded by Mr. Hanna and approved (Aye-7/Nay-0).
- The Executive Director presented additional information requested by the Board regarding "The Genentech Managed Distribution System". Following discussion, the Board directed staff to schedule a meeting with representatives of the company during the March 1996 meeting.
- RES. 96-132** Mrs. Neuber moved that the Board approve the State NABPLEX Agreement for the June 1996, September 1996, and January 1997 administrations of the examination. The motion was seconded by Mrs. Plant and approved (Aye-7/Nay-0).
- RES. 96-133** Mrs. Plant moved that the Board approve the payment of the \$250 dues for membership in the National Association of Boards of Pharmacy for 1996. The motion was approved (Aye-7/Nay-0) following a second by Mrs. Neuber.
- The Board reviewed correspondence from a pharmacist in Iowa who intends to establish a pharmacy care consultant business for the public by mail. Following a review and questions posed by Board members, the matter was tabled in order to obtain additional information.
- 3:50 p.m. Mr. Hanna excused himself from the meeting to attend to personal business. The Board continued to review administrative matters and correspondence.
- 4:15 p.m. The Board was joined by Assistant Attorney General Mary Hollern for the purpose of creating a record in the matter of R.Ph. John Keyser pursuant to Chapters 119. and 4729. of the Revised Code.

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4:35 p.m. The record in the matter was closed. Mrs. Plant moved that the Board adopt the following
RES. 96-134 Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-950426-048)

In The Matter Of:

JOHN H. KEYSER, R.Ph.
9701 Cooper Lane
Cincinnati, Ohio 45242
(R.Ph. No. 03-1-12366)

INTRODUCTION

THE MATTER OF JOHN H. KEYSER CAME ON FOR CONSIDERATION ON JANUARY 22, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JOHN H. KEYSER WAS NOT PRESENT NOR WAS HE REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Tim Benedict, R.Ph., Ohio State Board of Pharmacy
- (2) William McMillen, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity letter dated April 26, 1995.
- (2) Exhibit 1A--Pharmacist File Front Sheet of John H. Keyser showing original date of registration as August 10, 1977.
- (3) Exhibit 1B--Renewal Application for Pharmacist License, No. 03-1-12366, for a license to practice pharmacy in Ohio from September 15, 1994, to September 15, 1995, signed and dated on July 6, 1994.
- (4) Exhibit 2--Handwritten statement of R. Brian McDonald signed and notarized on May 8, 1995.
- (5) Exhibit 3--Handwritten statement of Steve Shepherd signed and notarized on May 11, 1995.
- (6) Exhibit 4--Handwritten statement of Jerome R. Riga signed and notarized on July 13, 1995.

Respondent's Exhibits:

- (1) None

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) On April 26, 1995, John H. Keyser was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing.
- (2) As demonstrated by return receipt of May 1, 1995, John H. Keyser received the letter of April 26, 1995, informing him of the allegations against him, and his rights.
- (3) John H. Keyser has not responded in any manner to the letter of April 26, 1995, and has not requested a hearing in this matter.
- (4) Records of the Board indicate that John H. Keyser was originally licensed to practice pharmacy in the state of Ohio on August 10, 1977, pursuant to examination; and, on April 26, 1995, John H. Keyser's license was summarily suspended in accordance with Sections 3719.121(A) and 3719.121(B) of the Ohio Revised Code.
- (5) John H. Keyser is addicted to or abusing controlled substances or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code, to wit: John H. Keyser has admitted to stealing Cocaine HCl, Vicodin, and Xanax; John H. Keyser has admitted to abusing such drugs while practicing pharmacy; and, John H. Keyser has admitted to being addicted to controlled substances.
- (6) John H. Keyser did, over a two month time period during 1995, with the purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, Bethesda North Hospital, to wit: John H. Keyser stole 14.6gm of Cocaine HCl from his employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (6) of the Findings of Fact constitutes being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (5) and (6) of the Findings of Fact constitute being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued April 26, 1995.

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

- (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. 03-1-12366, held by John H. Keyser indefinitely, effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, John H. Keyser may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
- (B) One year after the effective date of this Order John H. Keyser may petition the Board for reinstatement. The petition will be considered only if the following conditions have been met:
 - (1) John H. Keyser must enter into a contract, after the effective date of this Order, with a limited 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:
 - (a) random, **observed** urine screens shall be conducted at least once a month. The urine drug screens must report testing for alcohol and 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) The petition for reinstatement must include the following:
 - (a) Copies of contract(s) with treatment providers.
 - (b) Copies of all urine drug screen reports from the effective date of this Order.
 - (c) Documented evidence of at least three support group meetings per week. The verification must include the signature of the chairman.
 - (d) Written documentation from the treatment provider regarding compliance with the program pursuant to the contract(s).
 - (e) Certificates of continuing pharmacy education experience obtained during the three years prior to submitting the petition.

The petition will be reviewed by the Compliance Administrator to determine that it contains all required documentation and presented to the Board for their consideration. If the documentation is complete and the Board is convinced that Mr. Keyser has complied with the Board's Order, the license to practice will be reinstated. If the documentation does not establish compliance with the Board's Order, the Board will propose to deny the petition for reinstatement and a Notice of Opportunity for a Chapter 119. hearing will be issued by the Board.

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 certificate of registration to the offices of the state board of pharmacy within ten days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

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

MOTION CARRIED.

SO ORDERED.

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

4:40 p.m. The meeting was recessed until 8:00 a.m., Tuesday, January 23, 1996.

TUESDAY, JANUARY 23, 1996

9:30 a.m. ROLL CALL

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

Paul F. Lamping, R.Ph. (President); Suzanne L. Neuber, R.Ph. (Vice-President); Robert Cavendish, R.Ph.; Amonte Littlejohn, R.Ph.; Joseph Maslak, R.Ph.; Wayne Miller, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

The Board was joined by Tim Benedict, Compliance Administrator, for the purpose of reviewing the quarterly report regarding the compliance and enforcement activities of the Board.

10:10 a.m. The Board recessed for ten minutes.

10:23 a.m. The Board reconvened and was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing pursuant to Revised Code Chapters 119. and 4729. in the matters of R.Ph. Carl S. Mowery, Painesville, and R.Ph. James L. Gwinnup, Burton.

11:55 a.m. The Board recessed for lunch.

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- 1:05 p.m. The Board members were joined by Board member John Hanna and reconvened in Room 1919
RES. 96-135 for the purpose of meeting with the candidates for licensure pursuant to Ohio Revised Code Section 4729.09 and Ohio Administrative Code Rule 4729-5-32. Mrs. Neuber moved that the successful candidates be recorded in the Minutes. The motion was seconded by Mr. Maslak and approved (Aye-8/Nay-0).

KIMBERLY A. BUTCH	03-2-21508	WEST VIRGINIA
ISIS CHESKO	03-2-21571	SOUTH CAROLINA
JEAN M. COURTNEY	03-2-21574	KENTUCKY
COURTNEY E. CRAWFORD	03-2-21564	MICHIGAN
JULIE K. DELABARRE	03-2-21489	INDIANA
REBECCA A. FARNEY	03-2-21532	KENTUCKY
BARBARA E. FIRTH	03-2-21569	INDIANA
JANIS L. GOLLER	03-2-21500	KENTUCKY
DAVID S. HARKINS	03-2-21562	KENTUCKY
DANA J. JAMERO	03-2-21566	NEVADA
AARON M. KANAS	03-2-21549	PENNSYLVANIA
ANDREW J. KLINE	03-2-21540	ARIZONA
PAUL M. KNAPP	03-2-21462	PENNSYLVANIA
JENNIFER B. LAMPUS	03-2-21567	INDIANA
ANTHONY A. MARTINO	03-2-21573	WEST VIRGINIA
TONYA P. MATHIS	03-2-21568	MISSISSIPPI
JAMES K. RUSK	03-2-21490	KENTUCKY
REDA M. SAMAAAN	03-2-21541	ILLINOIS
RENEE SCANIO	03-2-21496	PENNSYLVANIA
ANNE MARIE SESTI	03-2-21511	MICHIGAN
GENE A. SEXTON	03-2-21565	WEST VIRGINIA
TERRY L. STAGGS	03-2-21533	TEXAS
JENNIFER K. TRENT	03-2-21528	WEST VIRGINIA
DAVID E. WILER	03-2-21507	MICHIGAN
EUN HEE WOO	03-2-21470	TEXAS
CAROL L. YINGLING	03-2-21572	ARKANSAS

- 1:30 p.m. The Board reconvened in Room 1914 for the purpose of continuing the hearing in the matters of R.Ph. Carl S. Mowery, Painesville, and R.Ph. James L. Gwinnup, Burton.
- 3:35 p.m. The hearing was concluded and the Board recessed for five minutes.
- 3:45 p.m. The Board reconvened to consider agenda items. The Board reviewed a proposed settlement
RES. 96-136 agreement in the matter of R.Ph. Nancy A. Womeldorph. Following discussion, Mr. Maslak moved that the proposed settlement agreement be approved by the Board as follows:

PROPOSED
SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-950726-007)

In The Matter Of:

NANCY A. WOMELDORPH, R.Ph.
447 W. 5th Street
Chillicothe, Ohio 45601
(R.Ph. No. 03-1-10909)

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

Nancy A. Womeldorph enters into this Agreement being fully informed of her rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudication hearing on the issues contained herein. Nancy A. Womeldorph acknowledges that by entering into this Agreement she has waived her rights under Chapter 119. of the Revised Code.

Nancy A. Womeldorph is knowingly and voluntarily acknowledging that, in order to settle the disciplinary charges that have been filed by the Board against her and in order to obviate the need to conduct an administrative hearing to consider possible disciplinary sanctions against Nancy A. Womeldorph's license to practice pharmacy in the state of Ohio, this Agreement is entered into on the basis of the following stipulations, admissions, and understandings:

- (A) The Ohio State Board of Pharmacy is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, place on probation, refuse to grant or renew an identification card, or impose a monetary penalty on the license holder for violation of any of the enumerated grounds.
- (B) Nancy A. Womeldorph was originally licensed to practice pharmacy in the state of Ohio on July 30, 1974, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (C) On or about July 26, 1995, pursuant to Chapter 119. of the Ohio Revised Code, Nancy A. Womeldorph was notified of the allegations or charges against her, her right to a hearing her rights in such hearing and her right to submit contentions in writing. Further, a hearing was requested and scheduled for January 24, 1996; however, the hearing was continued by the Board.
- (D) Nancy A. Womeldorph was notified of the following allegations, and the Board herein adjudicates the same:
 - (1) Records of the Board of Pharmacy indicate that Nancy A. Womeldorph was originally licensed in the state of Ohio on July 30, 1974, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that, on or about October 21, 1991, Nancy A. Womeldorph was disciplined by the Board for practicing pharmacy after her license had lapsed but prior to its renewal.
 - (2) Nancy A. Womeldorph did, on or about July 20, 1994, intentionally make and/or knowingly possess a false or forged prescription, to wit: while practicing pharmacy at Foodtown Pharmacy #77 in Bowling Green, Ohio, Nancy A. Womeldorph created prescription number 4404926 for 100 unit doses of Lomotil, a schedule V controlled substance, when it had not been authorized by a practitioner. Subsequently, the prescription was filled with Diphenoxylate Hydrochloride/Atropine Sulfate 2.5mg. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
 - (3) Nancy A. Womeldorph did, on or about July 20, 1994, make or utter a false or forged prescription for a dangerous drug, to wit: while practicing pharmacy at Foodtown Pharmacy #77 in Bowling Green, Ohio, Nancy A. Womeldorph created prescription number 6634683 for 100 unit doses of Phenergan 25mg, a dangerous drug, when it had not been authorized by a practitioner. Subsequently, the prescription was filled with 100 unit doses of Promethazine 25mg. Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.

- (4) Nancy A. Womeldorph did, from December 3, 1992, through March 25, 1993, make or utter a false or forged prescription for a dangerous drug, to wit: while practicing pharmacy at Bartley's Discount Drug in Chillicothe, Ohio, Nancy A. Womeldorph created prescription number 6000587 for 60 unit doses and 3 refills of Aldactone 25mg, a dangerous drug, when it had not been authorized by a practitioner. Subsequently, the prescription was filled on four occasions with 60 unit doses of Spironolactone 25mg and a fifth occasion with 30 unit doses of Spironolactone 25mg. Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.
- (5) Nancy A. Womeldorph did, from December 3, 1992, through September 2, 1993, make or utter a false or forged prescription for a dangerous drug, to wit: while practicing pharmacy at Bartley's Discount Drug in Chillicothe, Ohio, Nancy A. Womeldorph created prescription number 6000588 for 60 unit doses and 3 refills of Hydroxyzine 50mg, a dangerous drug, when it had not been authorized by a practitioner. Subsequently, the prescription was filled on three occasions with 60 unit doses of Hydroxyzine 50mg and on three more occasions with 30 unit doses of Hydroxyzine 50mg. Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.
- (6) Nancy A. Womeldorph did, on or about December 10, 1992, and again on January 7, 1993, make or utter a false or forged prescription for a dangerous drug, to wit: while practicing pharmacy at Bartley's Discount Drug in Chillicothe, Ohio, Nancy A. Womeldorph created prescription number 6000652 for Lo/Ovral-28 with "refill PRN", a dangerous drug, when it had not been authorized by a practitioner. Additionally, "refill PRN" is not a valid refill authorization pursuant to paragraph (E) of Rule 4729-5-30 of the Ohio Administrative Code. Nancy A. Womeldorph refilled the prescription on one occasion. Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.
- (7) Nancy A. Womeldorph did, on or about December 10, 1992, and again on December 17, 1992, make or utter a false or forged prescription for a dangerous drug, to wit: while practicing pharmacy at Bartley's Discount Drug in Chillicothe, Ohio, Nancy A. Womeldorph created prescription number 6000653 for 10 unit doses of Prozac with "refill PRN", a dangerous drug, when it had not been authorized by a practitioner. Additionally, "refill PRN" is not a valid refill authorization pursuant to paragraph (E) of Rule 4729-5-30 of the Ohio Administrative Code. Nancy A. Womeldorph refilled the prescription on one occasion. Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.
- (8) Nancy A. Womeldorph did, from December 10, 1992, through April 8, 1993, make or utter a false or forged prescription for a dangerous drug, to wit: while practicing pharmacy at Bartley's Discount Drug in Chillicothe, Ohio, Nancy A. Womeldorph created prescription number 6000654 for 60 unit doses with "refill PRN" of Promethazine 25mg, a dangerous drug, when it had not been authorized by a practitioner. Additionally, "refill PRN" is not a valid refill authorization pursuant to paragraph (E) of Rule 4729-5-30 of the Ohio Administrative Code. Subsequently, the prescription was filled on five occasions with 60 unit doses of Promethazine 25mg, and on two occasions with 30 unit doses of Promethazine 25mg. Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Nancy A. Womeldorph knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) The Ohio State Board of Pharmacy and Nancy A. Womeldorph stipulate that Nancy A. Womeldorph's license to practice pharmacy in the state of Ohio shall be placed on probation for one year, effective May 1, 1996. The terms of probation are as follows:
 - (1) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that Nancy A. Womeldorph's pharmacist identification card is not in good standing and hereby denies her the privilege of being a preceptor and training pharmacy interns.
 - (2) Nancy A. Womeldorph must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (3) Nancy A. Womeldorph must abide by the rules of the State Board of Pharmacy.
 - (4) Nancy A. Womeldorph must comply with the terms of this Agreement.
- (B) Nancy A. Womeldorph must take and successfully complete the state jurisprudence examination offered by the Board, prior to May 1, 1997. If Nancy A. Womeldorph has not successfully completed the exam prior to May 1, 1997, her license will be suspended until successful completion has been achieved.
- (C) Nancy A. Womeldorph agrees to the imposition of a monetary penalty of \$500.00 due and owing within 30 days of the effective date of this Agreement. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0320.

If, in the judgment of the Board, Nancy A. Womeldorph appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to, at any time, revoke probation, modify the conditions of probation, and reduce or extend the period of probation, and/or the Board may institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

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

Nancy A. Womeldorph waives any and all claims or causes of action she may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement.

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

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This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective May 1, 1996.

Nancy A. Womeldorph, Respondent

Date of Signature

J. Jeffrey Benson, Attorney for Respondent

Date of Signature

Paul Lamping, President, Ohio State Board of Pharmacy

Date of Signature

Mary L. Hollern, Ohio Assistant Attorney General

Date of Signature

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

Mrs. Plant moved that the Minutes of the November 27, 28, 29, 30, and December 1, 1995 meeting be approved as amended. The motion was seconded by Mrs. Neuber and approved by the Board (Aye-8/Nay-0).

4:00 p.m. Mr. Maslak moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony received in the matter of R.Ph. Richard Gary Stauffer. The motion was seconded by Mrs. Plant and a roll call vote was conducted by President Lamping as follows: Cavendish-Yes, Hanna-Yes, Littlejohn-Yes, Maslak-Yes, Miller-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

The following members of the Board did not deliberate in this matter since they were not present during the hearing - Mr. Hanna, Mr. Maslak, and Mrs. Plant.

4:30 p.m. The Executive Session was concluded and the meeting opened to the public. Mrs. Neuber moved

RES. 96-137 that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-950308-040)

In The Matter Of:

RICHARD GARY STAUFFER, R.Ph.

1024 Newfields Land
Westerville, Ohio 43081
(R.Ph. No. 03-2-13934)

INTRODUCTION

THE MATTER OF RICHARD GARY STAUFFER CAME TO HEARING ON OCTOBER 18, 1995, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

RICHARD GARY STAUFFER WAS REPRESENTED BY WILLIAM J. MOONEY, AND THE STATE OF OHIO WAS REPRESENTED BY LAWRENCE D. PRATT, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Christopher K. Reed, Ohio State Board of Pharmacy
- (2) Richard Gary Stauffer, Respondent
- (3) Robert Amiet, Jr., R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Richard Gary Stauffer, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity letter dated March 8, 1995.
- (2) Exhibit 1A--Addendum Notice dated May 16, 1995.
- (3) Exhibit 1B--Addendum Notice dated June 6, 1995.
- (4) Exhibit 1C--Hearing Request letter dated April 3, 1995.
- (5) Exhibit 1D--Hearing Schedule letter dated April 7, 1995.
- (6) Exhibit 1E--Pharmacist File Front Sheet of Richard Gary Stauffer showing original date of registration as August 1, 1980.
- (7) Exhibit 1F--Renewal Application for Pharmacist License, No. 03-2-13934, for a license to practice pharmacy in Ohio from September 15, 1994, to September 15, 1995, of Richard Gary Stauffer dated June 26, 1994.
- (8) Exhibit 1G--Continuance Request letter dated June 22, 1995.
- (9) Exhibit 1H--Hearing Schedule letter dated June 26, 1995.
- (10) Exhibit 2--Accountability Statement of Medi-Serv Pharmacy, Terminal Distributor License No. 02-685600, for Oxycodone/APAP 325 dated February 27, 1995.
- (11) Exhibit 3--Accountability Statement of Risch's Number Eight, Inc., Terminal Distributor License No. 02-097550, for Oxycodone/APAP 325 dated March 7, 1995.
- (12) Exhibit 4--Seven-page Order of the State Board of Pharmacy, Docket No. D-870828-011, in the matter of Richard Gary Stauffer, R.Ph. dated January 29, 1988.
- (13) Exhibit 5--Three-page Order of the State Board of Pharmacy, Docket No. D-870828-011, in the matter of Richard Gary Stauffer, R.Ph. dated March 8, 1989.
- (14) Exhibit 6--Four-page Order of the State Board of Pharmacy, Docket No. D-870828-011, in the matter of Richard Gary Stauffer, R.Ph. dated June 30, 1989.
- (15) Exhibit 7--Three certified docket sheets in the Mayor's Court, City of Whitehall, Ohio, case numbers 89-1342, 89-1343, and 89-1344 of Richard G. Stauffer dated May 4, 1989.
- (16) Exhibit 8--Certified Sentence Entry in the Franklin County Municipal Court, Columbus, Ohio, Case No. 92-129552, of Richard Stauffer dated September 29, 1992.
- (17) Exhibit 9--Accountability Statement of Medi-Serv Pharmacy, Terminal Distributor License No. 02-685600, for Methylphenidate 10mg dated February 27, 1995.
- (18) Exhibit 10--Accountability Statement of Medi-Serv Pharmacy, Terminal Distributor License No. 02-685600, for Methylphenidate 20mg dated February 27, 1995.
- (19) Exhibit 11--Accountability Statement of Risch's Number Eight, Inc., Terminal Distributor License No. 02-097550, for Methylphenidate 10mg dated March 7, 1995.
- (20) Exhibit 12--Accountability Statement of Risch's Number Eight, Inc., Terminal Distributor License No. 02-097550, for Methylphenidate 20mg dated March 7, 1995.
- (21) Exhibit 13--Accountability Statement of Risch's Number Eight, Inc., Terminal Distributor License No. 02-097550, for Oxycodone/APAP 500 dated March 7, 1995.
- (22) Exhibit 14--Accountability Statement of Risch's Number Eight, Inc., Terminal Distributor License No. 02-097550, for Oxycodone/ASA 325 dated March 7, 1995.
- (23) Exhibit 15--DEA Form 222, Order No. 933006053, of MediServ N. High Pharmacy, Inc. dated December 2, 1994.

- (24) Exhibit 16--Renewal Application for DDD License, No. 02-685600, for a Terminal Distributor of Dangerous Drugs License from January 1, 1995, to December 31, 1995, of MediServ North High Pharmacy, Inc. dated November 7, 1994.
- (25) Exhibit 17--Four-page Certified Judgment in the Court of Common Pleas, Greene County, Ohio, Case No. 86-CR-14, of Richard Gary Stauffer dated May 9, 1986.
- (26) Exhibit 18--CPF MetPath Laboratories Toxicology Requisition with Chain of Custody Form of Richard G. Stauffer dated October 18, 1995; and MetPath Laboratories urine Drug Testing Results of Richard G. Stauffer dated October 20, 1995.

Respondent's Exhibits:

- (1) None

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 Richard Gary Stauffer was originally licensed to practice pharmacy in the state of Ohio on August 1, 1980, and on March 8, 1995, Richard Gary Stauffer's license was summarily suspended in accordance with Sections 3719.121(A) and 3719.121(B) of the Ohio Revised Code.
- (2) Richard Gary Stauffer did, from November 8, 1994, to February 23, 1995, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Medi-Serv North High Pharmacy, beyond the express or implied consent of the owner, to wit: during this time period, Richard Gary Stauffer admittedly stole between 300 and 500 unit doses of Oxycodone 5mg with APAP 325mg for his own personal abuse while practicing pharmacy; actual thefts total 1,314 unit doses (70.3% of the drug stock). Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (3) Richard Gary Stauffer did, from June, 1994, to September, 1994, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Risch's Drugs, beyond the express or implied consent of the owner, to wit: during this time period, Richard Gary Stauffer admittedly between 300 and 500 unit doses of Oxycodone 5mg with APAP 325mg for his own personal abuse while practicing pharmacy; actual thefts total 678 units doses (4.2% of the drug stock). Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Richard Gary Stauffer is addicted to or abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Richard Gary Stauffer has admitted abusing controlled substances while practicing pharmacy; Richard Gary Stauffer's license to practice pharmacy was suspended by the Board in January of 1988 for theft of drugs, illegal processing of drug documents, drug abuse, felony drug abuse convictions, and drug addiction. Further, Richard Gary Stauffer was refused reinstatement to the practice of pharmacy in March of 1989 because he failed to meet the conditions of the January 1988 Order; and though his license to practice pharmacy was reinstated in June of 1989, Richard Gary Stauffer was, on or about September 20, 1989, and again on September 29, 1992, convicted for Operating a Motor Vehicle while Intoxicated, which indicates that Richard Gary Stauffer has not stopped abusing or has again relapsed into further alcohol and/or drug abuse.

- (5) Richard Gary Stauffer did, from December 27, 1994, to February 27, 1995, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Medi-Serv North High Pharmacy, beyond the express or implied consent of the owner, to wit: Richard Gary Stauffer stole the following controlled substances in the following amounts:

<u>Drug</u>	<u>Quantity</u>	<u>% of Stock</u>
Methylphenidate 10mg	603 tablets	26.6%
Methylphenidate 20mg	398 tablets	71.5%

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

- (6) Richard Gary Stauffer did, from May 27, 1994, through March 7, 1995, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Risch's Drugs, beyond the express or implied consent of the owner, to wit: during this time period, Richard Gary Stauffer stole the following controlled substances in the following amounts:

<u>Drug</u>	<u>Quantity</u>	<u>% of Stock</u>
Methylphenidate 10mg	152 tablets	6.8%
Methylphenidate 20mg	527 tablets	32.4%
Oxycodone/APAP 500mg	164 tablets	19.7%
Oxycodone/ASA 325mg	163 tablets	11.5%

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

- (7) Richard Gary Stauffer did, on or about December 6, 1994, knowing that an official investigation was likely to be instituted, destroy, conceal, or remove a record or document with purpose to impair its value or availability as evidence in such investigation, to wit: Richard Gary Stauffer destroyed, concealed, or removed from Medi-Serv North High Pharmacy D.E.A. 222 form number 933006053 in order to conceal the purchase of 1,000 tablets of Methylphenidate 10mg and 1,000 tablets of Oxycodone/APAP 325mg. Such conduct is in violation of Section 2921.12 of the Ohio Revised Code.
- (8) Richard Gary Stauffer as the Responsible Pharmacist did, on or about November 7, 1994, pursuant to federal regulations, fail to take a complete inventory of the controlled substances on hand, to wit: when signing as the Responsible Pharmacist for Medi-Serv North High Pharmacy, Inc., Richard Gary Stauffer failed to take a complete and accurate inventory of the controlled substances on hand as required by Rule 4729-5-11(C)(2) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2), (3), and (5) through (8) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (4) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (4) and (8) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 3719. or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued March 8, 1995.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Richard Gary Stauffer:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-2-13934, held by Richard Gary Stauffer effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-2-13934, held by Richard Gary Stauffer effective as of the date of the mailing of this Order.
- (C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-2-13934, held by Richard Gary Stauffer effective as of the date of the mailing of this Order.

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

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Cavendish and approved (Aye-5/Nay-0).

Mr. Cavendish moved that the Minutes of the November 3, 1995 meeting be approved. The motion was seconded by Mr. Hanna and approved by the Board (Aye-5/Nay-0/Abstain-3).

RES. 96-138 Mrs. Plant moved that the Board adopt the following Order in the matter of Jacops' Catering:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-950830-015)

In The Matter Of:

JACOBS' CATERING

Robert E. Jacobs, Jr.
1658 Loblolly Ct., Suite 327
Kent, Ohio 44240
(Terminal Distributor No. 83-000003)

INTRODUCTION

THE MATTER OF JACOBS' CATERING CAME ON FOR CONSIDERATION ON JANUARY 22, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

ROBERT E. JACOBS, JR. OF JACOBS' CATERING WAS NOT PRESENT NOR WAS JACOBS' CATERING REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

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

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter dated August 30, 1995.
- (2) Exhibit 1A--Two-page Application for Registration as a Terminal Distributor of Dangerous Drugs of Robert Jacobs for Jacobs' Catering signed and dated on February 28, 1995.
- (3) Exhibit 1B--1995 Terminal Distributor License, No. 83-000003, of Jacobs' Catering with attached Drug List Addendum dated March 9, 1995.
- (4) Exhibit 2--Two-page Dangerous Drug Distributor Inspection Report of Jacobs' Catering, Terminal Distributor No. 83-000003, regarding phone contact on March 17, 1995, and mailing of the license.
- (5) Exhibit 3--Copy of letter from Robert Jacobs dated March 7, 1995.
- (6) Exhibit 4--Two-page statement of Shirley A. Owens signed and notarized on May 8, 1995.
- (7) Exhibit 5--Two-page customer copy receipt from AGA Gas & Welding, Order No. 010515, dated May 10, 1995, with attached Hazardous Material Shipping Paper dated May 10, 1995, and receipt from AGA Gas and Welding dated May 10, 1995.
- (8) Exhibit 6--Four 3" x 3" color photographs of Nitrous Oxide tanks seized from Robert Jacobs van on May 10, 1995.
- (9) Exhibit 7--Youngstown Police Department Rights and Waiver form signed by Robert Jacobs on May 10, 1995, at 12:32 p.m.; and Youngstown Police Department Rights and Waiver form signed by Robert Jacobs on May 10, 1995, at 1442 hr.
- (10) Exhibit 8--Microcassette tape recorded interview of Robert Jacobs with George Pavlich and Tom Malone dated May 10, 1995.
- (11) Exhibit 9--Copy of Youngstown Police Department Arrest Report, No. 338179, of Robert E. Jacobs dated May 10, 1995; and 3" x 3" color photograph of Robert Jacobs, Jr. dated May 10, 1995.
- (12) Exhibit 9A--Two-count Indictment in the Mahoning County Common Pleas Court, Case No. 95 CR 397, of Robert E. Jacobs, Jr. dated June 2, 1995.

- (13) Exhibit 10--Copy of Handy Mini Storage Customer Payment Receipt for unit number D048 in the name of Robert Jacops dated May 10, 1995, with attachments as follows: Lease Addendum signed by Robert Jacops dated May 10, 1995; and Rental Agreement signed by Robert Jacops, not dated.
- (14) Exhibit 11--Ohio State Board of Pharmacy Personal Delivery Record in the matter of Jacops' Catering for item delivery on October 24, 1995.

Respondent's Exhibits:

- (1) None

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) On August 30, 1995, Jacops' Catering was notified by letter of its right to a hearing, its rights in such hearing, and its right to submit its contentions in writing.
- (2) As demonstrated by personal delivery record dated October 24, 1995, Robert E. Jacops, Jr. of Jacops' Catering received the letter of August 30, 1995, informing him of the allegations against Jacops' Catering, and its rights.
- (3) Jacops' Catering has not responded in any manner to the letter of August 30, 1995, and has not requested a hearing in this matter.
- (4) Records of the Board of Pharmacy indicate that Robert E. Jacops, Jr. is the applicant signing on behalf of Jacops' Catering pursuant to Section 4729.55 of the Ohio Revised Code.
- (5) Robert E. Jacops, Jr. did, on or about February 28, 1995, knowingly make a false statement with the purpose to secure the issuance by a governmental agency of a license, certificate, or registration, to wit: Robert E. Jacops filed an application with the Board of Pharmacy falsely indicating that he had a catering business located at 2445 State Route 59, Ravenna, Ohio, and that the type of establishment being licensed was a "food processor." Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.
- (6) Robert E. Jacops, Jr., and Jacops' Catering did, on or about May 10, 1995, possess for sale at retail dangerous drugs when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Robert E. Jacops, Jr. and Jacops' Catering possessed two tanks of Nitrous Oxide for sale for abuse purposes and not for a legitimate medical purpose pursuant to orders by practitioners nor for food preparation or sale. Such conduct is in violation of Section 4729.51(C)(2) of the Ohio Revised Code.
- (7) Jacops' Catering does not satisfy the qualifications of a terminal distributor as set forth in Section 4729.55 of the Ohio Revised Code, to wit: Jacops' Catering is 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; and, adequate safeguards are not assured to prevent the sale or other distribution of dangerous drugs by persons other than a pharmacist, dentist, optometrist, physician, or veterinarian.

- (8) Robert E. Jacops, Jr. did, on or about May 10, 1995, by deception, procure the dispensing of a dangerous drug, to wit: Robert E. Jacops used a falsely obtained license from the Board of Pharmacy and he gave a letter containing false statements to AGA, Inc., so as to obtain two tanks of Nitrous Oxide. Such conduct is in violation of Section 2925.22 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitutes making false material statements in an application for a license as a terminal distributor of dangerous drugs as provided in Division (A)(1) of Section 4729.57 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (6) and (7) of the Findings of Fact constitute violating rules of the Board as provided in Division (A)(2) of Section 4729.57 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (6) and (7) of the Findings of Fact constitute violating provisions of Chapter 4729. of the Revised Code as provided in Division (A)(3) of Section 4729.57 of the Ohio Revised Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (6) of the Findings of Fact constitutes violating any provisions of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, or Chapter 3715. of the Revised Code as provided in Division (A)(4) of Section 4729.57 of the Ohio Revised Code.
- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (5) and (8) of the Findings of Fact constitute violating provisions of the federal narcotic law or Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.57 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.57 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Jacops' Catering:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor license, No. 83-000003, held by Jacops' Catering, effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor license, No. 83-000003, held by Jacops' Catering, effective as of the date of the mailing of this Order.
- (C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor license, No. 83-000003, held by Jacops' Catering, effective as of the date of the mailing of this Order.
- (D) On the basis of the Findings of Fact and paragraph (4) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor license, No. 83-000003, held by Jacops' Catering, effective as of the date of the mailing of this Order.

- (E) On the basis of the Findings of Fact and paragraph (5) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor license, No. 83-000003, held by Jacobs' Catering, effective as of the date of the mailing of this Order.

Division (B)(1) of Section 4729.57 of the Ohio Revised Code provides: "Upon the suspension or revocation of a license issued to a terminal distributor of dangerous drugs or the refusal by the board to renew such a license, the distributor shall immediately surrender his license to the board." The license 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 Mrs. Neuber and approved (Aye-7/Nay-0/Abstain-1[Littlejohn]).

RES. 96-139 Mrs. Neuber moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-950724-006)

In The Matter Of:

CARL S. MOWERY, R.Ph.
68 Charlotte Street
Painesville, Ohio 44077
(R.Ph. No. 03-1-04861)

INTRODUCTION

THE MATTER OF CARL S. MOWERY CAME TO HEARING ON JANUARY 23, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

CARL S. MOWERY WAS NOT PRESENT BUT WAS REPRESENTED BY EDWARD T. BRICE, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

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

Respondent's Witnesses:

- (1) James L. Gwinnup, R.Ph.

-01/23/96-

RECORD OF THE PROCEEDINGS

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(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter of Carl S. Mowery dated July 24, 1995.
- (2) Exhibit 1A--Notice of Opportunity letter of James L. Gwinnup dated July 24, 1995.
- (3) Exhibit 1B--Three-page letter from Edward T. Brice dated August 10, 1995, with attachments as follows: copy of four-page Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Pharmacy dated October 8, 1990; two-page copy of Summary of Presentence Report by Diane Mealey, Geauga County Adult Probation Officer, not dated; copy of Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Drugs dated January 2, 1991; copy of two-page letter from Carl S. Mowery dated October 18, 1990; copy of two-page letter from Edward T. Brice dated November 12, 1991; copy of two-page Judgment of Conviction in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated November 7, 1991; copy of two-page Order in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl Mowery dated October 16, 1991; copy of five-page Indictment in the Geauga County Common Pleas Court of Carl S. Mowery dated August 1, 1991; copy of pages 1, 6, 7, and Certificate of Service of the Transcript of the Proceedings in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery on September 24, 1991; copy of Report and Order Terminating Probation in the Geauga County Common Pleas Court, Case No. 91-C-0117, of Carl Mowery dated January 4, 1993; copy of letter from George R. Simmons dated April 1, 1994; copy of two-page Judgment Entry in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated July 1, 1994; copy of letter from Edward T. Brice dated July 11, 1994; copy of Wholesale Distributor of Dangerous Drugs License, No. 01-345900, of Burton Drug, Inc., expiration dated June 30, 1996; copy of Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date December 31, 1995; and copy of letter from R. M. Decipeda dated August 1, 1995.
- (4) Exhibit 1C--Two-page Hearing Request letter for James L. Gwinnup and Carl S. Mowery dated August 23, 1995, with attachments as follows: copy of two-page Judgment Entry in the Geauga County Common Pleas Court of James L. Gwinnup dated January 25, 1994; copy of canceled check, No. 261, of James L. Gwinnup dated September 25, 1991; and copy of letter from David P. Joyce dated September 14, 1992.
- (5) Exhibit 1D--Hearing Schedule letter for Carl S. Mowery dated August 28, 1995.
- (6) Exhibit 1E--Hearing Schedule letter for James L. Gwinnup dated August 28, 1995.
- (7) Exhibit 1F--Letter from Edward T. Brice dated January 10, 1996.
- (8) Exhibit 1G--Copy of letter from David L. Rowland dated January 10, 1996.
- (9) Exhibit 1H--Pharmacist File Front Sheet of Carl Stanford Mowery showing original date of registration as January 23, 1951; Renewal Application for Pharmacist License, No. 03-1-04861, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of Carl S. Mowery dated October 11, 1995; and attached copy of letter from R. M. Decipeda dated August 1, 1995.
- (10) Exhibit 1I--Pharmacist File Front Sheet of James Lloyd Gwinnup showing original date of registration as July 31, 1956; and Renewal Application for Pharmacist License, No. 03-3-06248, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of James L. Gwinnup dated July 6, 1995.
- (11) Exhibit 1J--Renewal Applications for Annual License, No. 02-098700, as a Terminal Distributor of Dangerous Drugs of Burton Drug, Inc. for the years of 1987 through 1995.
- (12) Exhibit 2--Six-page Dangerous Drug Distributor Inspection Report of Burton Drug, Inc., Terminal Distributor License No. 02-098700, dated October 2, 1990, with attached two-page copy of letter from Carl S. Mowery dated October 18, 1990.
- (13) Exhibit 2A--Three-page Dangerous Drug Distributor Inspection Report of Burton Drug, Inc., Terminal Distributor License No. 02-098700, dated February 5, 1991, with attached letter from Carl S. Mowery dated February 21, 1991.
- (14) Exhibit 3--Prescription No. 264765.
- (15) Exhibit 3A--Refill log sheet dated from January 22, 1991, to January 24, 1991.

- (16) Exhibit 4--Prescription number 263937.
- (17) Exhibit 4A--Refill log sheet dated from January 15, 1991, to January 17, 1991.
- (18) Exhibit 5--Prescriptions numbered 264751 and 264752.
- (19) Exhibit 5A--Refill log sheet dated from January 14, 1991, to January 15, 1991.
- (20) Exhibit 6--Prescription number 262111.
- (21) Exhibit 6A--Refill log sheet dated from December 17, 1990, to December 19, 1990.
- (22) Exhibit 7--Prescription number 261584.
- (23) Exhibit 7A--Amber vial labeled prescription number 261584 dated March 30, 1990.
- (24) Exhibit 7B--Copy of refill log sheet dated from October 1, 1990, to October 2, 1990.
- (25) Exhibit 7C--Copy of prescription number 261590.
- (26) Exhibit 8--Prescription number 249224.
- (27) Exhibit 8A--Refill log sheet dated from January 5, 1990, to January 19, 1990.
- (28) Exhibit 9--Prescription number 240683.
- (29) Exhibit 9A--Refill log sheet dated from February 1, 1990, to February 2, 1990.
- (30) Exhibit 10--Prescription number 240270.
- (31) Exhibit 10A--Refill log sheet dated from February 23, 1990, to February 24, 1990.
- (32) Exhibit 11--Prescription number 240876.
- (33) Exhibit 11A--Refill log sheet dated from January 8, 1990, to January 9, 1990.
- (34) Exhibit 11B--Copy of refill log sheet dated from January 5, 1990, to January 19, 1990.
- (35) Exhibit 12--Prescription number 246821.
- (36) Exhibit 12A--Refill log sheet dated from August 9, 1990, to August 10, 1990.
- (37) Exhibit 13--Prescription number 246247.
- (38) Exhibit 13A--Refill log sheet dated from September 6, 1990, to September 7, 1990.
- (39) Exhibit 14--Prescription number 246922.
- (40) Exhibit 14A--Refill log sheet dated June 4, 1990.
- (41) Exhibit 15--Prescription number 246921.
- (42) Exhibit 16--Prescription number 246642.
- (43) Exhibit 16A--Refill log sheet dated from February 24, 1990, to February 26, 1990.
- (44) Exhibit 17--Prescription number 246761.
- (45) Exhibit 17A--Refill log sheet dated from April 2, 1990, to April 3, 1990.
- (46) Exhibit 18--Prescription number 249545.
- (47) Exhibit 18A--Refill log sheet dated from September 27, 1990, to September 28, 1990.
- (48) Exhibit 19--Prescription number 249790.
- (49) Exhibit 19A--Refill log sheet dated from July 17, 1990, to July 19, 1990.
- (50) Exhibit 20--Prescription number 249846.
- (51) Exhibit 20A--Refill log sheet dated from August 28, 1990, to August 29, 1990.
- (52) Exhibit 21--Prescription number 249246.
- (53) Exhibit 22--Prescription number 252042.
- (54) Exhibit 22A--Refill log sheet dated from June 18, 1990, to June 19, 1990.
- (55) Exhibit 23--Prescription number 253593.
- (56) Exhibit 23A--Refill log sheet dated from March 6, 1990, to March 7, 1990.
- (57) Exhibit 24--Prescription number 253858.
- (59) Exhibit 24A--Refill log sheet dated from June 29, 1990, to July 2, 1990.
- (60) Exhibit 25--Prescription number 253748.
- (61) Exhibit 25A--Refill log sheet dated from August 10, 1990, to August 11, 1990.
- (62) Exhibit 26--Prescription number 256735.
- (63) Exhibit 26A--Refill log sheet dated from February 17, 1990, to February 19, 1990.
- (64) Exhibit 26B--Refill log sheet dated from April 6, 1990, to April 9, 1990.
- (65) Exhibit 26C--Refill log sheet dated from April 24, 1990, to April 26, 1990.
- (66) Exhibit 26D--Refill log sheet dated from August 11, 1990, to August 13, 1990.
- (67) Exhibit 26E--Refill log sheet dated September 1, 1990, and from September 4, 1990, to September 6, 1990.
- (68) Exhibit 27--Prescription number 256922.
- (69) Exhibit 27A--Refill log sheet dated from August 20, 1990, to August 22, 1990.
- (70) Exhibit 28--Prescription number 256944.
- (71) Exhibit 28A--Refill log sheet dated from March 13, 1990, to March 15, 1990.
- (72) Exhibit 28B--Refill log sheet dated from June 21, 1990, to June 22, 1990.
- (73) Exhibit 28C--Refill log sheet dated from August 3, 1990, to August 6, 1990.

- (74) Exhibit 29--Prescription number 256736.
- (75) Exhibit 29A--Refill log sheet dated January 2, 1990.
- (76) Exhibit 29B--Copy of refill log sheet dated from February 17, 1990, to February 19, 1990.
- (77) Exhibit 29C--Refill log sheet dated from June 5, 1990, to June 6, 1990.
- (78) Exhibit 29D--Copy of refill log sheet dated from June 29, 1990, to July 2, 1990.
- (79) Exhibit 30--Handwritten letter from Nena Gillian, not dated.
- (80) Exhibit 31--Prescription number 271740.
- (81) Exhibit 32--Prescription number 249860.
- (82) Exhibit 332A--Refill log sheet dated from September 20, 1990, to September 21, 1990.
- (83) Exhibit 33--Prescription number 257182.
- (84) Exhibit 33A--Refill log sheet dated May 22, 1990.
- (85) Exhibit 34--Prescription number 249229.
- (86) Exhibit 34A--Copy of refill log sheet dated from September 27, 1990, to September 28, 1990.
- (87) Exhibit 35--Prescription number 255402.
- (88) Exhibit 35A--Refill log sheet dated from February 12, 1990, to February 13, 1990.
- (89) Exhibit 36--Prescription number 255011.
- (90) Exhibit 36A--Refill log sheet dated from September 19, 1990, to September 20, 1990.
- (91) Exhibit 37--Prescription number 257647.
- (92) Exhibit 37A--Refill log sheet dated from September 14, 1990, to September 17, 1990.
- (93) Exhibit 38--Prescription number 255190.
- (94) Exhibit 38A--Refill log sheet dated from August 25, 1990, to August 27, 1990.
- (95) Exhibit 39--Prescription number 256312.
- (96) Exhibit 40--Prescription number 254864.
- (97) Exhibit 40A--Refill log sheet dated from February 15, 1990, to February 16, 1990.
- (98) Exhibit 41--Prescription number 255179.
- (99) Exhibit 41A--Refill log sheet dated from March 31, 1990 to April 2, 1990.
- (100) Exhibit 41B--Refill log sheet dated from May 15, 1990, to May 16, 1990.
- (101) Exhibit 41C--Refill log sheet dated from June 19, 1990, to June 20, 1990.
- (102) Exhibit 42--Prescription number 255230.
- (103) Exhibit 43--Telephone prescription number 269606, and corresponding hard-copy prescription from the Cleveland Clinic Foundation, No. 856112.
- (104) Exhibit 43A--Refill log sheet dated from September 1, 1990, to September 4, 1990.
- (105) Exhibit 44--Prescription number 264012.
- (106) Exhibit 45--Prescription number 257868.
- (107) Exhibit 46--Copy of letter from Dennis M. Coyne dated November 13, 1991; copy of Ohio State Board of Pharmacy form number PHA-0004, in the matter of Carl S. Mowery dated November 5, 1991; and two-page copy of Judgment of Conviction in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated November 7, 1991.
- (108) Exhibit 46A--Letter from Dennis M. Coyne dated December 3, 1991; Ohio State Board of Pharmacy form number PHA-0004 in the matter of Carl Mowery dated December 3, 1991; and two-page certified copy of Judgment of Conviction Nunc Pro Tunc in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated November 18, 1991.
- (109) Exhibit 51--Refill log sheet dated from January 7, 1992 (sic) to January 9, 1991.
- (110) Exhibit 52--Ohio State Board of Pharmacy form number PHA-0004 in the matter of James L. Gwinnup dated October 25, 1991; and three-page certified copy of Judgment of Conviction in the Geauga County Common Pleas Court, Case No. 91 C 000101, of James L. Gwinnup dated October 17, 1991.
- (111) Exhibit 53--Dangerous Drug Distributor Inspection Report of Burton Drug, Inc., Terminal Distributor No. 02-05-1294, dated September 18, 1979; and copy of letter from Carl S. Mowery dated September 20, 1979.

Respondent Carl Mowery's Exhibits:

- (1) Exhibit A1--Copy of two-page letter from Edward T. Brice dated November 12, 1991.
- (2) Exhibit A2--Copy of two-page Judgment of Conviction in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated November 7, 1991.
- (3) Exhibit A3--Copy of two-page Order in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated October 16, 1991.
- (4) Exhibit A4--Copy of five-page Indictment in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated August 1, 1991.
- (5) Exhibit A5--Copy of page 1, 6, 7, and Certificate of Service of the Transcript of Proceedings in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery on September 24, 1991.
- (6) Exhibit A6--Copy of page two of Summary of Presentence Report by Diane Mealey, Geauga County Adult Probation Officer, not dated.
- (7) Exhibit B--Copy of two-page Judgment Entry in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated July 1, 1994; and copy of letter from Edward T. Brice dated July 11, 1994.
- (8) Exhibit C--Copy of Journal Entry in the Geauga County Common Pleas Court, Case No. 91-C-0117, of Carl Mowery dated January 4, 1993.
- (9) Exhibit D1--Copy of Ohio State Board of Pharmacy Wholesale Distributor of Dangerous Drugs License, No. 01-345900, of Burton Drug, Inc., expiration date of June 30, 1996.
- (10) Exhibit D2--Copy of Ohio State Board of Pharmacy Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date of December 31, 1995.
- (11) Exhibit D3--Copy of Ohio State Board of Pharmacy Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date of December 31, 1994.
- (12) Exhibit D4--Copy of Ohio State Board of Pharmacy Wholesale Distributor of Dangerous Drugs License, No. 01-345900, of Burton Drug, Inc., expiration date of June 30, 1994.
- (13) Exhibit D5--Copy of Ohio State Board of Pharmacy Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date of December 31, 1993.
- (14) Exhibit D6--Copy of Certificate of License as Terminal Distributor of Dangerous Drugs, License No. 02-098700, of Burton Drug, Inc. from January 1, 1993, to December 31, 1993.
- (15) Exhibit D7--Copy of Ohio State Board of Pharmacy Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date of December 31, 1991.
- (16) Exhibit D8--Copy of Ohio State Board of Pharmacy Wholesale Distributor of Dangerous Drugs License, No. 01-345900, of Burton Drug, Inc., expiration date of December 31, 1991.
- (17) Exhibit E1--Copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-1-04861, of Carl S. Mowery for a license to practice in Ohio until the expiration date of September 15, 1994; and copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-1-04861, of Carl S. Mowery for a license to practice in Ohio until the expiration date of September 15, 1995.
- (18) Exhibit E2--Copy of front and back sides of Ohio State Board of Pharmacy pocket identification card, No. 03-1-04861, of Carl S. Mowery for a license to practice in Ohio until the expiration date of September 15, 1992.
- (19) Exhibit E3--Copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-1-04861, of Carl S. Mowery for a license to practice in Ohio until the expiration date of September 15, 1991.
- (20) Exhibit F1--Copy of two-page letter from Edward T. Brice dated October 12, 1995; and copy of letter from R. M. Decipeda, M.D. dated August 1, 1995.
- (21) Exhibit G--Copy of letter from George R. Simmons dated April 1, 1994.
- (22) Exhibit H--Copy of letter from Detective C. McNabb dated March 23, 1994.

- (23) Exhibit I--Copy of four-page Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Pharmacy dated October 8, 1990; copy of summary of events on October 2, 1990, and February 5, 1991, not signed or dated; copy of Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Drugs dated January 2, 1991; and copy of two-page letter from Carl S. Mowery dated October 18, 1990.
- (24) Exhibit J--Copy of Carl Mowery Proclamation dated October 16, 1995.
- (25) Exhibit K--Copy of letter from Forrest W. Burt dated January 18, 1996; copy of two-page letter from George R. Simmons dated January 22, 1996; copy of letter from Nick Fischbach dated January 22, 1996; copy of letter from M. J. Domadia dated January 12, 1996; copy of letter from William J. Martin, Sr., Robert S. Martin, William J. Martin, Jr., and Lisa S. Martin dated January 18, 1996; copy of two-page letter from Dennis Nichols dated January 18, 1996; copy of letter from William H. Armstrong dated January 17, 1996; copy of letter from William Lapointe dated January 17, 1996; copy of letter from Jerry A. Hiscox dated January 19, 1996; copy of letter from Peter M. Lee dated January 18, 1996; copy of two-page letter from Jim Gonczy dated January 19, 1996; copy of letter from Duane F. Ferris dated January 16, 1996; copy of letter from Mark A. Lombardi dated January 17, 1996; copy of two-page letter from Earl Vansant dated January 19, 1996; copy of letter from C. Richard Roose dated January 17, 1996; copy of letter from Roy N. Cluts, not dated; copy of letter from Russ Hurd dated January 18, 1996; and copy of two-page letter from Dorothy H. Lee dated January 23, 1996.

Respondent James Lloyd Gwinnup's Exhibits:

- (1) Exhibit A1--Copy of two-page letter from Edward T. Brice dated August 23, 1995.
- (2) Exhibit A2--Copy of two-page Judgment Entry in the Geauga County Common Pleas Court of James L. Gwinnup dated January 25, 1994; and copy of canceled check, No. 261, of James L. Gwinnup dated September 25, 1991.
- (3) Exhibit A3--Copy of letter from David P. Joyce dated September 14, 1992.
- (4) Exhibit B--Copy of three-page letter from Edward T. Brice dated September 21, 1995.
- (5) Exhibit C--Copy of two-page letter from Edward T. Brice dated October 12, 1995.
- (6) Exhibit D1--Copy of letter from H. F. Inderlied, Jr. dated January 22, 1992.
- (7) Exhibit D2--Copy of two-page Judgment of Conviction Nunc Pro Tunc in the Geauga County Common Pleas Court, Case No. 91 C 000101, of James L. Gwinnup dated January 28, 1992.
- (8) Exhibit E1--Copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-3-06248, of James L. Gwinnup, expiration date of September 15, 1995.
- (9) Exhibit E2--Copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-3-06248, of James L. Gwinnup, expiration date of September 15, 1996.
- (10) Exhibit F--Copy of four-page Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Pharmacy dated October 8, 1990; copy of summary of events on October 2, 1990, and February 5, 1991, not signed or dated.
- (11) Exhibit G--Copy of partial list of accomplishments of James Lloyd Gwinnup, not dated.
- (12) Exhibit H--Copy of letter from Forrest W. Burt dated January 18, 1996; copy of two-page letter from Greg Gwinnup dated January 17, 1996; copy of letter from James L. Gwinnup, Jr. dated January 18, 1996; copy of letter from Thomas R. Dietrich dated January 11, 1996; copy of letter from M. J. Domadia dated January 11, 1996; copy of letter from Jason A. Gwinnup dated January 12, 1996; copy of letter from Joseph C. Clark dated January 13, 1996; copy of letter from Mohammad Ansari dated January 15, 1996; copy of letter from Greg Hodgins dated January 15, 1996; copy of letter from Jeffrey R. Gwinnup dated January 15, 1996; copy of letter from Gilbert L. Gwinnup dated January 21, 1996; copy of two-page letter from George R. Simmons dated January 22, 1996; and copy of letter from Donald E. Braunlich dated January 20, 1996.

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 Carl S. Mowery was originally licensed in the state of Ohio on January 23, 1951, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Further, during the relevant time periods alleged herein, Carl S. Mowery was the Responsible Pharmacist at Burton Drug, Inc., Terminal Distributor No. 02-098700, 14548 Main Street, Burton, Ohio 44021 pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-16 of the Ohio Administrative Code.
- (2) On or about the following dates, Carl S. Mowery as the Responsible Pharmacist did sell, offer for sale, give away, or deliver at retail or to the consumer without a prescription from a physician, a drug which under federal or Ohio law can be sold only on prescription, to wit: Carl S. Mowery dispensed the following dangerous drugs, on the following dates, after the prescriptions had expired and/or without valid refills:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
264765	12/15/90	Diabinese 250mg	100
264765	01/23/91	Diabinese 250mg	100
263937	01/16/91	Glucotrol 5mg	100
264752	01/14/91	Diabeta 2.5mg	100
262111	06/20/90	Tagamet 200mg	5
262111	12/19/90	Tagamet 200mg	5
261584	10/02/90	Slow K	100
249224	01/18/90	Esgic	30
240683	02/01/90	Tenormin 50mg	100
240270	02/23/90	Hydrodiuril 25mg	25
240876	01/09/90	Ornade	20
240876	01/18/90	Ornade	20
246821	08/09/90	Rynatan	40
246247	09/07/90	Theo-Dur 300mg	100
246922	06/04/90	Ceclor 250mg	150ml
246921	06/04/90	Naldecon Ped.	6oz
246642	02/26/90	Keflex 250mg	20
246761	04/03/90	Hygroton 50mg	100
249545	09/27/90	Premarin 0.625mg	100
249790	07/17/90	Ornade	30
249846	08/28/90	Doxycycline 100mg	10
249246	08/09/90	Ceclor 250mg	20
252042	06/19/90	Lasix 40mg	30
253593	08/08/89	Inderal 20mg	100
253593	03/07/90	Inderal 20mg	100
253858	11/16/89	Kaon CL-10	100
253858	07/02/90	Kaon CL-10	100
253748	08/11/90	Diuril 0.5mg	50
256735	02/17/90	Lasix 20mg	30
256735	04/07/90	Lasix 20mg	30
256735	04/25/90	Lasix 20mg	30
256735	08/13/90	Lasix 20mg	30
256735	09/05/90	Lasix 20mg	30
256922	03/07/90	Triavil 4/50	100
256922	08/22/90	Triavil 4/50	100

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<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
256944	03/14/90	Lanoxin 0.125mg	100
256944	06/22/90	Lanoxin 0.125mg	100
256944	08/03/90	Lanoxin 0.125mg	100
256736	01/02/90	Aldactone 25mg	60
256736	02/17/90	Aldactone 25mg	60
256736	04/25/90	Aldactone 25mg	60
256736	06/05/90	Aldactone 25mg	60
256736	06/30/90	Aldactone 25mg	60

Such conduct is in violation of Section 3715.52(B)(12) of the Ohio Revised Code.

- (3) On or about the following dates, Carl S. Mowery as the Responsible Pharmacist did knowingly sell a controlled substance in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: while working at Burton Drug, Inc., Carl S. Mowery or someone under his control sold the following drugs, in the following amounts, without a legitimate prescription and without a legitimate medical purpose:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
*****	12/28/89	Darvocet N-100	100
271740	12/14/90	Percocet	25
249860	09/20/90	Xanax 0.5mg	50
257182	05/22/90	Xanax 0.5mg	50
249229	09/27/90	Dalmane 15mg	30
255402	02/13/90	Tylenol with Codeine 30mg	50
255011	09/20/90	Phenergan w/Codeine	8oz
257647	09/17/90	Tranxene 7.5mg	50
255190	08/27/90	Darvocet N-100	15
256312	08/11/90	Darvocet N-100	?
254864	02/16/90	Librium 5mg	100
255179	03/31/90	Tylenol with Codeine 30mg	30
255179	04/24/90	Tylenol with Codeine 30mg	30
255179	05/15/90	Tylenol with Codeine 30mg	30
255179	06/19/90	Tylenol with Codeine 30mg	30

Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.

- (4) On or about the following dates, Carl S. Mowery as the Responsible Pharmacist did knowingly sell a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: while working at Burton Drug, Inc., Carl S. Mowery or someone under his control sold the following drugs, in the following amounts, without a legitimate prescription and without a legitimate medical purpose:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
255230	10/22/88	Seconal 100mg	30
269606	09/04/90	Percocet	30

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

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- (5) On or about the following dates, Carl S. Mowery as the Responsible Pharmacist did fail to record pertinent information on the original prescription, to wit: on the following prescriptions listed below, Carl S. Mowery or someone under his control failed to record required information such as manual initials, patient address, physician information, generic substitution information, and/or refill information:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
264765	11/30/89	Diabinese 250mg	100
263937	12/04/89	Glucotrol 5mg	100
264752	01/10/90	Diabeta 2.5mg	100
262111	09/11/89	Tagamet 200mg	10
264012	12/01/89	Procardia 10mg	100
261584	08/01/89	Slow K	100
249224	12/24/87	Esgic	30
240683	06/17/86	Tenormin 50mg	100
240270	08/29/86	Hydrodiuril 25mg	25
240876	10/07/86	Ornade	20
246821	08/13/87	Rynatan	40
246247	07/01/87	Theo-Dur 300mg	100
246922	07/24/87	Ceclor 250mg	150ml
246921	07/24/87	Naldecon Ped	6oz
246642	08/01/87	Keflex 250mg	20
246761	07/21/87	Hygroton 50mg	100
249545	09/02/87	Premarin 0.625mg	100
249790	12/28/88	Ornade	30
249846	01/26/88	Doxycycline 100mg	10
249246	12/**/87	Ceclor 250mg	20
252042	05/05/88	Lasix 40mg	30
253593	07/21/88	Inderal 20mg	100
253858	08/**/88	Kaon CL-10	100
253748	08/08/88	Diuril 0.5mg	50
256735	12/**/88	Lasix 20mg	30
256922	01/06/89	Triavil 4/50	100
256944	01/07/89	Lanoxin 0.125mg	100
256736	12/29/88	Aldactone 25mg	60
257868	11/01/89	Diabeta 5mg	30

Such conduct is in violation of Rules 4729-5-17 and 4729-5-30 of the Ohio Administrative Code.

- (6) Prior to October 2, 1990, Carl S. Mowery as the Responsible Pharmacist permitted nonlicensed personnel to possess a key to the pharmacy, to wit: Carl S. Mowery allowed his daughter, Susan Mowery, to possess a key to Burton Drug, Inc., which gave her access and control over the pharmacy and dangerous drug stock. Further, the refrigerator, containing dangerous drugs, was in a location that was not within the pharmacy area, and therefore, accessible to nonlicensed personnel. Such conduct is in violation of Rules 4729-9-05 and 4729-9-11 of the Ohio Administrative Code.
- (7) As the responsible pharmacist, Carl S. Mowery did hold or offer for sale drugs which were adulterated, to wit: vials of outdated dangerous drugs and vials of outdated controlled substances were interspersed throughout the dispensing shelves and/or in the refrigerator. Further, the pharmacy area, including the dispensing shelves, was cluttered and filthy. Such conduct is in violation of Section 3715.52(B)(1) of the Ohio Revised Code.

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- (8) On or about the following dates, Carl S. Mowery as the Responsible Pharmacist dispensed drugs pursuant to improper prescriptions and kept them in the pharmacy, to wit: Carl S. Mowery or someone under his control dispensed the following controlled substance prescriptions disregarding the need for required information such as the full name of patient, patient address, physician DEA number, physician address, and/or dispensing date:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
255230	10/22/88	Seconal 100mg	30
269606	09/04/**	Percocet	30
271740	12/14/90	Percocet	25
249860	01/26/88	Xanax 0.5mg	50
257182	01/17/89	Xanax 0.5mg	50
249229	11/23/87	Dalmane 15mg	30
255402	10/29/88	Tylenol with Codeine 30mg	50
257647	02/03/89	Tranxene 7.5mg	50
255190	10/20/88	Darvocet N-100	15
256312	12/10/88	Darvocet N-100	**
254864	10/06/88	Librium 5mg	100
255179	10/19/88	Tylenol with Codeine 30mg	30

Such conduct is in violation of Section 3719.05 of the Ohio Revised Code.

- (9) On or about September 24, 1991, Carl S. Mowery pled guilty to Attempt to Violate Section 4729.37 of the Ohio Revised Code and to Rule 4729-5-30 of the Ohio Administrative Code on December 15, 1990, a lesser included offense of the eighteen counts of said indictment, in violation of Section 2923.02 and 4729.37 of the Ohio Revised Code and Rule 4729-5-30 of the Ohio Administrative Code, and being first degree misdemeanors.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (9) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (9) of the Findings of Fact constitutes 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.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (4) and (7) through (9) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and on the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-1-04861, held by Carl S. Mowery effective as of the date of the mailing of this Order. Further, the Board will reinstate Carl S. Mowery's license to practice pharmacy in Ohio after he takes and successfully completes the law examination(s) required, at the time he takes the examination(s), in paragraph (B)(1) of Rule 4729-5-31 of the Ohio Administrative Code.

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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 certificate of registration to the offices of the state board of pharmacy within ten days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Littlejohn and approved (Aye-5/Nay-2/Abstain-1[Hanna]).

RES. 96-140 Mr. Miller moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-950724-005)

In The Matter Of:

JAMES L. GWINNUP, R.Ph.
Box 115 Garden Street
Burton, Ohio 44021
(R.Ph. No. 03-3-06248)

INTRODUCTION

THE MATTER OF JAMES L. GWINNUP CAME TO HEARING ON JANUARY 23, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JAMES L. GWINNUP WAS REPRESENTED BY EDWARD T. BRICE, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

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

Respondent's Witnesses:

- (1) James L. Gwinnup, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter of Carl S. Mowery dated July 24, 1995.
- (2) Exhibit 1A--Notice of Opportunity letter of James L. Gwinnup dated July 24, 1995.

- (3) Exhibit 1B--Three-page letter from Edward T. Brice dated August 10, 1995, with attachments as follows: copy of four-page Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Pharmacy dated October 8, 1990; two-page copy of Summary of Presentence Report by Diane Mealey, Geauga County Adult Probation Officer, not dated; copy of Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Drugs dated January 2, 1991; copy of two-page letter from Carl S. Mowery dated October 18, 1990; copy of two-page letter from Edward T. Brice dated November 12, 1991; copy of two-page Judgment of Conviction in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated November 7, 1991; copy of two-page Order in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl Mowery dated October 16, 1991; copy of five-page Indictment in the Geauga County Common Pleas Court of Carl S. Mowery dated August 1, 1991; copy of pages 1, 6, 7, and Certificate of Service of the Transcript of the Proceedings in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery on September 24, 1991; copy of Report and Order Terminating Probation in the Geauga County Common Pleas Court, Case No. 91-C-0117, of Carl Mowery dated January 4, 1993; copy of letter from George R. Simmons dated April 1, 1994; copy of two-page Judgment Entry in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated July 1, 1994; copy of letter from Edward T. Brice dated July 11, 1994; copy of Wholesale Distributor of Dangerous Drugs License, No. 01-345900, of Burton Drug, Inc., expiration dated June 30, 1996; copy of Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date December 31, 1995; and copy of letter from R. M. Decipeda dated August 1, 1995.
- (4) Exhibit 1C--Two-page Hearing Request letter for James L. Gwinnup and Carl S. Mowery dated August 23, 1995, with attachments as follows: copy of two-page Judgment Entry in the Geauga County Common Pleas Court of James L. Gwinnup dated January 25, 1994; copy of canceled check, No. 261, of James L. Gwinnup dated September 25, 1991; and copy of letter from David P. Joyce dated September 14, 1992.
- (5) Exhibit 1D--Hearing Schedule letter for Carl S. Mowery dated August 28, 1995.
- (6) Exhibit 1E--Hearing Schedule letter for James L. Gwinnup dated August 28, 1995.
- (7) Exhibit 1F--Letter from Edward T. Brice dated January 10, 1996.
- (8) Exhibit 1G--Copy of letter from David L. Rowland dated January 10, 1996.
- (9) Exhibit 1H--Pharmacist File Front Sheet of Carl Stanford Mowery showing original date of registration as January 23, 1951; Renewal Application for Pharmacist License, No. 03-1-04861, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of Carl S. Mowery dated October 11, 1995; and attached copy of letter from R. M. Decipeda dated August 1, 1995.
- (10) Exhibit 1I--Pharmacist File Front Sheet of James Lloyd Gwinnup showing original date of registration as July 31, 1956; and Renewal Application for Pharmacist License, No. 03-3-06248, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of James L. Gwinnup dated July 6, 1995.
- (11) Exhibit 1J--Renewal Applications for Annual License, No. 02-098700, as a Terminal Distributor of Dangerous Drugs of Burton Drug, Inc. for the years of 1987 through 1995.
- (12) Exhibit 2--Six-page Dangerous Drug Distributor Inspection Report of Burton Drug, Inc., Terminal Distributor License No. 02-098700, dated October 2, 1990, with attached two-page copy of letter from Carl S. Mowery dated October 18, 1990.
- (13) Exhibit 2A--Three-page Dangerous Drug Distributor Inspection Report of Burton Drug, Inc., Terminal Distributor License No. 02-098700, dated February 5, 1991, with attached letter from Carl S. Mowery dated February 21, 1991.
- (14) Exhibit 3--Prescription No. 264765.
- (15) Exhibit 3A--Refill log sheet dated from January 22, 1991, to January 24, 1991.
- (16) Exhibit 4--Prescription number 263937.
- (17) Exhibit 4A--Refill log sheet dated from January 15, 1991, to January 17, 1991.
- (18) Exhibit 5--Prescriptions numbered 264751 and 264752.
- (19) Exhibit 5A--Refill log sheet dated from January 14, 1991, to January 15, 1991.
- (20) Exhibit 6--Prescription number 262111.
- (21) Exhibit 6A--Refill log sheet dated from December 17, 1990, to December 19, 1990.
- (22) Exhibit 7--Prescription number 261584.

- (23) Exhibit 7A--Amber vial labeled prescription number 261584 dated March 30, 1990.
- (24) Exhibit 7B--Copy of refill log sheet dated from October 1, 1990, to October 2, 1990.
- (25) Exhibit 7C--Copy of prescription number 261590.
- (26) Exhibit 8--Prescription number 249224.
- (27) Exhibit 8A--Refill log sheet dated from January 5, 1990, to January 19, 1990.
- (28) Exhibit 9--Prescription number 240683.
- (29) Exhibit 9A--Refill log sheet dated from February 1, 1990, to February 2, 1990.
- (30) Exhibit 10--Prescription number 240270.
- (31) Exhibit 10A--Refill log sheet dated from February 23, 1990, to February 24, 1990.
- (32) Exhibit 11--Prescription number 240876.
- (33) Exhibit 11A--Refill log sheet dated from January 8, 1990, to January 9, 1990.
- (34) Exhibit 11B--Copy of refill log sheet dated from January 5, 1990, to January 19, 1990.
- (35) Exhibit 12--Prescription number 246821.
- (36) Exhibit 12A--Refill log sheet dated from August 9, 1990, to August 10, 1990.
- (37) Exhibit 13--Prescription number 246247.
- (38) Exhibit 13A--Refill log sheet dated from September 6, 1990, to September 7, 1990.
- (39) Exhibit 14--Prescription number 246922.
- (40) Exhibit 14A--Refill log sheet dated June 4, 1990.
- (41) Exhibit 15--Prescription number 246921.
- (42) Exhibit 16--Prescription number 246642.
- (43) Exhibit 16A--Refill log sheet dated from February 24, 1990, to February 26, 1990.
- (44) Exhibit 17--Prescription number 246761.
- (45) Exhibit 17A--Refill log sheet dated from April 2, 1990, to April 3, 1990.
- (46) Exhibit 18--Prescription number 249545.
- (47) Exhibit 18A--Refill log sheet dated from September 27, 1990, to September 28, 1990.
- (48) Exhibit 19--Prescription number 249790.
- (49) Exhibit 19A--Refill log sheet dated from July 17, 1990, to July 19, 1990.
- (50) Exhibit 20--Prescription number 249846.
- (51) Exhibit 20A--Refill log sheet dated from August 28, 1990, to August 29, 1990.
- (52) Exhibit 21--Prescription number 249246.
- (53) Exhibit 22--Prescription number 252042.
- (54) Exhibit 22A--Refill log sheet dated from June 18, 1990, to June 19, 1990.
- (55) Exhibit 23--Prescription number 253593.
- (56) Exhibit 23A--Refill log sheet dated from March 6, 1990, to March 7, 1990.
- (57) Exhibit 24--Prescription number 253858.
- (59) Exhibit 24A--Refill log sheet dated from June 29, 1990, to July 2, 1990.
- (60) Exhibit 25--Prescription number 253748.
- (61) Exhibit 25A--Refill log sheet dated from August 10, 1990, to August 11, 1990.
- (62) Exhibit 26--Prescription number 256735.
- (63) Exhibit 26A--Refill log sheet dated from February 17, 1990, to February 19, 1990.
- (64) Exhibit 26B--Refill log sheet dated from April 6, 1990, to April 9, 1990.
- (65) Exhibit 26C--Refill log sheet dated from April 24, 1990, to April 26, 1990.
- (66) Exhibit 26D--Refill log sheet dated from August 11, 1990, to August 13, 1990.
- (67) Exhibit 26E--Refill log sheet dated September 1, 1990, and from September 4, 1990, to September 6, 1990.
- (68) Exhibit 27--Prescription number 256922.
- (69) Exhibit 27A--Refill log sheet dated from August 20, 1990, to August 22, 1990.
- (70) Exhibit 28--Prescription number 256944.
- (71) Exhibit 28A--Refill log sheet dated from March 13, 1990, to March 15, 1990.
- (72) Exhibit 28B--Refill log sheet dated from June 21, 1990, to June 22, 1990.
- (73) Exhibit 28C--Refill log sheet dated from August 3, 1990, to August 6, 1990.
- (74) Exhibit 29--Prescription number 256736.
- (75) Exhibit 29A--Refill log sheet dated January 2, 1990.
- (76) Exhibit 29B--Copy of refill log sheet dated from February 17, 1990, to February 19, 1990.
- (77) Exhibit 29C--Refill log sheet dated from June 5, 1990, to June 6, 1990.
- (78) Exhibit 29D--Copy of refill log sheet dated from June 29, 1990, to July 2, 1990.
- (79) Exhibit 30--Handwritten letter from Nena Gillian, not dated.

- (80) Exhibit 31--Prescription number 271740.
- (81) Exhibit 32--Prescription number 249860.
- (82) Exhibit 332A--Refill log sheet dated from September 20, 1990, to September 21, 1990.
- (83) Exhibit 33--Prescription number 257182.
- (84) Exhibit 33A--Refill log sheet dated May 22, 1990.
- (85) Exhibit 34--Prescription number 249229.
- (86) Exhibit 34A--Copy of refill log sheet dated from September 27, 1990, to September 28, 1990.
- (87) Exhibit 35--Prescription number 255402.
- (88) Exhibit 35A--Refill log sheet dated from February 12, 1990, to February 13, 1990.
- (89) Exhibit 36--Prescription number 255011.
- (90) Exhibit 36A--Refill log sheet dated from September 19, 1990, to September 20, 1990.
- (91) Exhibit 37--Prescription number 257647.
- (92) Exhibit 37A--Refill log sheet dated from September 14, 1990, to September 17, 1990.
- (93) Exhibit 38--Prescription number 255190.
- (94) Exhibit 38A--Refill log sheet dated from August 25, 1990, to August 27, 1990.
- (95) Exhibit 39--Prescription number 256312.
- (96) Exhibit 40--Prescription number 254864.
- (97) Exhibit 40A--Refill log sheet dated from February 15, 1990, to February 16, 1990.
- (98) Exhibit 41--Prescription number 255179.
- (99) Exhibit 41A--Refill log sheet dated from March 31, 1990 to April 2, 1990.
- (100) Exhibit 41B--Refill log sheet dated from May 15, 1990, to May 16, 1990.
- (101) Exhibit 41C--Refill log sheet dated from June 19, 1990, to June 20, 1990.
- (102) Exhibit 42--Prescription number 255230.
- (103) Exhibit 43--Telephone prescription number 269606, and corresponding hard-copy prescription from the Cleveland Clinic Foundation, No. 856112.
- (104) Exhibit 43A--Refill log sheet dated from September 1, 1990, to September 4, 1990.
- (105) Exhibit 44--Prescription number 264012.
- (106) Exhibit 45--Prescription number 257868.
- (107) Exhibit 46--Copy of letter from Dennis M. Coyne dated November 13, 1991; copy of Ohio State Board of Pharmacy form number PHA-0004, in the matter of Carl S. Mowery dated November 5, 1991; and two-page copy of Judgment of Conviction in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated November 7, 1991.
- (108) Exhibit 46A--Letter from Dennis M. Coyne dated December 3, 1991; Ohio State Board of Pharmacy form number PHA-0004 in the matter of Carl Mowery dated December 3, 1991; and two-page certified copy of Judgment of Conviction Nunc Pro Tunc in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated November 18, 1991.
- (109) Exhibit 51--Refill log sheet dated from January 7, 1992 (sic) to January 9, 1991.
- (110) Exhibit 52--Ohio State Board of Pharmacy form number PHA-0004 in the matter of James L. Gwinnup dated October 25, 1991; and three-page certified copy of Judgment of Conviction in the Geauga County Common Pleas Court, Case No. 91 C 000101, of James L. Gwinnup dated October 17, 1991.
- (111) Exhibit 53--Dangerous Drug Distributor Inspection Report of Burton Drug, Inc., Terminal Distributor No. 02-05-1294, dated September 18, 1979; and copy of letter from Carl S. Mowery dated September 20, 1979.

Respondent Carl Mowery's Exhibits:

- (1) Exhibit A1--Copy of two-page letter from Edward T. Brice dated November 12, 1991.
- (2) Exhibit A2--Copy of two-page Judgment of Conviction in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated November 7, 1991.
- (3) Exhibit A3--Copy of two-page Order in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated October 16, 1991.

- (4) Exhibit A4--Copy of five-page Indictment in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated August 1, 1991.
- (5) Exhibit A5--Copy of page 1, 6, 7, and Certificate of Service of the Transcript of Proceedings in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery on September 24, 1991.
- (6) Exhibit A6--Copy of page two of Summary of Presentence Report by Diane Mealey, Geauga County Adult Probation Officer, not dated.
- (7) Exhibit B--Copy of two-page Judgment Entry in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated July 1, 1994; and copy of letter from Edward T. Brice dated July 11, 1994.
- (8) Exhibit C--Copy of Journal Entry in the Geauga County Common Pleas Court, Case No. 91-C-0117, of Carl Mowery dated January 4, 1993.
- (9) Exhibit D1--Copy of Ohio State Board of Pharmacy Wholesale Distributor of Dangerous Drugs License, No. 01-345900, of Burton Drug, Inc., expiration date of June 30, 1996.
- (10) Exhibit D2--Copy of Ohio State Board of Pharmacy Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date of December 31, 1995.
- (11) Exhibit D3--Copy of Ohio State Board of Pharmacy Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date of December 31, 1994.
- (12) Exhibit D4--Copy of Ohio State Board of Pharmacy Wholesale Distributor of Dangerous Drugs License, No. 01-345900, of Burton Drug, Inc., expiration date of June 30, 1994.
- (13) Exhibit D5--Copy of Ohio State Board of Pharmacy Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date of December 31, 1993.
- (14) Exhibit D6--Copy of Certificate of License as Terminal Distributor of Dangerous Drugs, License No. 02-098700, of Burton Drug, Inc. from January 1, 1993, to December 31, 1993.
- (15) Exhibit D7--Copy of Ohio State Board of Pharmacy Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date of December 31, 1991.
- (16) Exhibit D8--Copy of Ohio State Board of Pharmacy Wholesale Distributor of Dangerous Drugs License, No. 01-345900, of Burton Drug, Inc., expiration date of December 31, 1991.
- (17) Exhibit E1--Copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-1-04861, of Carl S. Mowery for a license to practice in Ohio until the expiration date of September 15, 1994; and copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-1-04861, of Carl S. Mowery for a license to practice in Ohio until the expiration date of September 15, 1995.
- (18) Exhibit E2--Copy of front and back sides of Ohio State Board of Pharmacy pocket identification card, No. 03-1-04861, of Carl S. Mowery for a license to practice in Ohio until the expiration date of September 15, 1992.
- (19) Exhibit E3--Copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-1-04861, of Carl S. Mowery for a license to practice in Ohio until the expiration date of September 15, 1991.
- (20) Exhibit F1--Copy of two-page letter from Edward T. Brice dated October 12, 1995; and copy of letter from R. M. Decipeda, M.D. dated August 1, 1995.
- (21) Exhibit G--Copy of letter from George R. Simmons dated April 1, 1994.
- (22) Exhibit H--Copy of letter from Detective C. McNabb dated March 23, 1994.
- (23) Exhibit I--Copy of four-page Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Pharmacy dated October 8, 1990; copy of summary of events on October 2, 1990, and February 5, 1991, not signed or dated; copy of Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Drugs dated January 2, 1991; and copy of two-page letter from Carl S. Mowery dated October 18, 1990.
- (24) Exhibit J--Copy of Carl Mowery Proclamation dated October 16, 1995.

- (25) Exhibit K--Copy of letter from Forrest W. Burt dated January 18, 1996; copy of two-page letter from George R. Simmons dated January 22, 1996; copy of letter from Nick Fischbach dated January 22, 1996; copy of letter from M. J. Domadia dated January 12, 1996; copy of letter from William J. Martin, Sr., Robert S. Martin, William J. Martin, Jr., and Lisa S. Martin dated January 18, 1996; copy of two-page letter from Dennis Nichols dated January 18, 1996; copy of letter from William H. Armstrong dated January 17, 1996; copy of letter from William Lapointe dated January 17, 1996; copy of letter from Jerry A. Hiscox dated January 19, 1996; copy of letter from Peter M. Lee dated January 18, 1996; copy of two-page letter from Jim Gonczy dated January 19, 1996; copy of letter from Duane F. Ferris dated January 16, 1996; copy of letter from Mark A. Lombardi dated January 17, 1996; copy of two-page letter from Earl Vansant dated January 19, 1996; copy of letter from C. Richard Roose dated January 17, 1996; copy of letter from Roy N. Cluts, not dated; copy of letter from Russ Hurd dated January 18, 1996; and copy of two-page letter from Dorothy H. Lee dated January 23, 1996.

Respondent James Lloyd Gwinnup's Exhibits:

- (1) Exhibit A1--Copy of two-page letter from Edward T. Brice dated August 23, 1995.
- (2) Exhibit A2--Copy of two-page Judgment Entry in the Geauga County Common Pleas Court of James L. Gwinnup dated January 25, 1994; and copy of canceled check, No. 261, of James L. Gwinnup dated September 25, 1991.
- (3) Exhibit A3--Copy of letter from David P. Joyce dated September 14, 1992.
- (4) Exhibit B--Copy of three-page letter from Edward T. Brice dated September 21, 1995.
- (5) Exhibit C--Copy of two-page letter from Edward T. Brice dated October 12, 1995.
- (6) Exhibit D1--Copy of letter from H. F. Inderlied, Jr. dated January 22, 1992.
- (7) Exhibit D2--Copy of two-page Judgment of Conviction Nunc Pro Tunc in the Geauga County Common Pleas Court, Case No. 91 C 000101, of James L. Gwinnup dated January 28, 1992.
- (8) Exhibit E1--Copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-3-06248, of James L. Gwinnup, expiration date of September 15, 1995.
- (9) Exhibit E2--Copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-3-06248, of James L. Gwinnup, expiration date of September 15, 1996.
- (10) Exhibit F--Copy of four-page Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Pharmacy dated October 8, 1990; copy of summary of events on October 2, 1990, and February 5, 1991, not signed or dated.
- (11) Exhibit G--Copy of partial list of accomplishments of James Lloyd Gwinnup, not dated.
- (12) Exhibit H--Copy of letter from Forrest W. Burt dated January 18, 1996; copy of two-page letter from Greg Gwinnup dated January 17, 1996; copy of letter from James L. Gwinnup, Jr. dated January 18, 1996; copy of letter from Thomas R. Dietrich dated January 11, 1996; copy of letter from M. J. Domadia dated January 11, 1996; copy of letter from Jason A. Gwinnup dated January 12, 1996; copy of letter from Joseph C. Clark dated January 13, 1996; copy of letter from Mohammad Ansari dated January 15, 1996; copy of letter from Greg Hodgins dated January 15, 1996; copy of letter from Jeffrey R. Gwinnup dated January 15, 1996; copy of letter from Gilbert L. Gwinnup dated January 21, 1996; copy of two-page letter from George R. Simmons dated January 22, 1996; and copy of letter from Donald E. Braunlich dated January 20, 1996.

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 James L. Gwinnup was originally licensed in the state of Ohio on July 31, 1956, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Further, during the relevant time periods alleged herein, James L. Gwinnup was employed at Burton Drug, Inc., Terminal Distributor No. 02-098700, 14548 Main Street, Burton, Ohio 44021.
- (2) James L. Gwinnup did, on or about the following dates, sell, offer for sale, give away, or deliver at retail or to the consumer without a prescription from a physician, a drug which under federal or Ohio law can be sold only on prescription, to wit: James L. Gwinnup dispensed the following dangerous drugs, on the following dates, after the prescriptions had expired and/or without valid refills:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
264765	01/23/91	Diabinese 250mg	100
263937	01/16/91	Glucotrol 5mg	100
262111	06/20/90	Tagamet 200mg	5
262111	12/19/90	Tagamet 200mg	5
253593	03/07/90	Inderal 20mg	100
256735	04/25/90	Lasix 20	30
256944	08/03/90	Lanoxin 0.125mg	100
256736	04/25/90	Aldactone 25mg	60
257868	12/06/89	Diabeta 5mg	30
257868	01/03/90	Diabeta 5mg	30
257868	04/02/90	Diabeta 5mg	30

Such conduct is in violation of Section 3715.52(B)(12) of the Ohio Revised Code.

- (3) On or about September 25, 1991, James L. Gwinnup pled guilty to Attempt to Violate Section 4729.37 of the Ohio Revised Code and Rule 4729-5-30 of the Ohio Administrative Code, a violation of Revised Code Section 2923.02, a first degree misdemeanor, and being a lesser included offense of the first count of said indictment, dispensing a prescription in violation of the rules and regulations adopted by the State Board of Pharmacy.

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 being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes 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.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Sections 3715.52 to 3715.72 or Chapter 4729, of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and on the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-3-06248, held by James L. Gwinnup effective as of the date of the mailing of this Order. Further, the Board will reinstate James L. Gwinnup's license to practice pharmacy in Ohio after he takes and successfully completes the law examination(s) required, at the time he takes the examination(s), in paragraph (B)(1) of Rule 4729-5-31 of the Ohio Administrative Code.

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 certificate of registration to the offices of the state board of pharmacy within ten days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Littlejohn and approved (Aye-6/Nay-1/Abstain-1[Hanna]).

5:00 p.m. The Board recessed until 9:00 a.m., Wednesday, January 24, 1996.

WEDNESDAY, JANUARY 24, 1996

9:17 a.m. The State Board of Pharmacy reconvened in Room 1914, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Paul F. Lamping, R.Ph. (President); John Hanna, R.Ph.; Amonte Littlejohn, R.Ph.; Joseph Maslak, R.Ph.; Wayne Miller, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

The Executive Director reported that the FDA has submitted proposed rules regarding the labeling of dietary products for public comment in writing by March 13, 1996. Following discussion, Mrs. Plant moved that written comments be prepared for review during the March Board meeting and submission to the FDA. The motion was seconded by Mr. Maslak and approved (Aye-6/Nay-0).

RES. 96-141 The Board reviewed a final draft of proposed legislation. Following consideration and discussion, Mrs. Plant moved that staff be directed to move forward with the following proposed legislation:

Section 3719.01 Definitions.

As used in this chapter:

- (A) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion, or any other means to a person or an animal.
- (B) "Board" means the state board of pharmacy established by section 4729.01 of the Revised Code.
- (C) "Drug enforcement administration" means the drug enforcement administration of the United States department of justice or its successor agency.
- (D) "Controlled substance" means a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V.

- (E) "Dangerous drug" has the same meaning as given that term in section 4729.02 of the Revised Code.
- (F) "Dispense" means sell, leave with, give away, dispose of, or deliver.
- (G) "Distribute" means to deal in, ship, transport, or deliver but does not include administering or dispensing a drug.
- (H) "Drug" has the same meaning as in section 4729.02 of the Revised Code.
- (I) "Drug abuse offense" and "felony drug abuse offense" have the same meanings as in section 2925.01 of the Revised Code.
- (J) "Federal drug abuse control laws" means the "Comprehensive Drug Abuse Prevention and Control Act of 1970," 84 Stat. 1242, 21 U.S.C. 801, as amended.
- (K) "Hospital" means an institution for the care and treatment of the sick and injured, certified by the department of health and approved by the state board of pharmacy as proper to be entrusted with the custody of controlled substances and the professional use of controlled substances under the direction of a practitioner or pharmacist.
- (L) "Hypodermic" means a hypodermic syringe or needle, or other instrument or device for the injection of medication.
- (M) "Isomer", except as otherwise expressly stated, means the optical isomer.
- (N) "Laboratory" means a laboratory approved by the state board of pharmacy as proper to be entrusted with the custody of controlled substances and the use of controlled substances for scientific and clinical purposes and for purposes of instruction.
- (O) "Manufacturer" means a person who plants, cultivates, harvests, processes, makes, prepares, or otherwise engages in any part of the production of a controlled substance by propagation, compounding, conversion, or processing, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container and other activities incident to production, except that a "manufacturer" does not include a pharmacist who prepares, compounds, packages, or labels a controlled substance as an incident to dispensing a controlled substance in accordance with a prescription and in the usual course of professional practice.
- (P) "Marihuana" means all parts of a plant of the genus cannabis, whether growing or not; the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin. "Marihuana" does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination.
- (Q) "Narcotic drugs" means coca leaves, opium, isonipecaine, amidone, isoamidone, ketobemidone, as defined in this division, and every substance not chemically distinguished from them and every drug, other than cannabis, that may be included in the meaning of "narcotic drug" under the federal drug abuse control laws. "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves, that do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made. "Isonipecaine" means any substance identified chemically as 1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyl ester, or any salt thereof, by whatever trade name designated. "Amidone" means any substance identified chemically as 4-4-diphenyl-6-dimethylamino-heptanone-3, or any salt thereof, by whatever trade name designated. "Isoamidone" means any substance identified chemically as 4-4-diphenyl-5-methyl-6-dimethylaminohexanone-3, or any salt thereof, by whatever trade name designated. "Ketobemidone" means any substance identified chemically as 4-(3-hydroxyphenyl)-1-methyl-4-piperidyl ethyl ketone hydrochloride, or any salt thereof, by whatever trade name designated.

- (R) "Noxious additive" means any element or compound designated by the board for use as a safe and effective ingredient in any product containing the ingredient toluene, the gas, fumes, or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, that will discourage the intentional smelling or inhaling of the fumes of that product. A noxious additive shall not be added to such a product if the addition would make the product unsuitable for its intended use, or adversely affect the performance of the product. The addition of a noxious additive to such a product is not required if the board determines that the normal chemical composition of the product creates a level of noxiousness that is sufficient to discourage the intentional smelling or inhaling of the product's fumes.
- (S) "Nurse" means a person licensed to engage in the practice of nursing in this state.
- (T) "Official written order" means an order written on a form provided for that purpose by the director of the United States drug enforcement administration, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law.
- (U) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under section 3719.41 of the Revised Code, the dextrorotatory isomer of 3-methoxy-N-methylmorphinan and its salts (dextro-methorphan). "Opiate" does include its racemic and levorotary forms.
- (V) "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds.
- (W) "Person" means any individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or other legal entity.
- (X) "Pharmacist" means a person registered with the board as a ~~compounder and dispenser of drugs~~ AND WHO HOLDS A CURRENT LICENSE TO ENGAGE IN THE PRACTICE OF PHARMACY PURSUANT TO CHAPTER 4729. OF THE REVISED CODE.
- (Y) "Pharmacy" means any area, room, rooms, place of business, department, or portion of any of the foregoing, where prescriptions are filled or where ~~drugs, dangerous drugs, or poisons~~ are compounded, sold, offered, or displayed for sale, dispensed, or distributed to the public.
- (Z) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- (AA) "Practitioner" means the following:
- (1) A person who is licensed pursuant to Chapter 4715., 4731., or 4741. of the Revised Code and authorized by law to write prescriptions for drugs or dangerous drugs;
 - (2) An advanced practice nurse authorized under section 4723.56 of the Revised Code to prescribe drugs and therapeutic devices.
- (BB) "Prescription" means a written or oral order for a controlled substance for the use of a particular person or a particular animal given by a practitioner in the course of professional practice and in accordance with the regulations promulgated by the director of the United States drug enforcement administration, pursuant to the federal drug abuse control laws.
- (CC) "Registry number" means the number assigned to each person registered under the federal drug abuse control laws.
- (DD) "Sale" includes delivery, barter, exchange, transfer, or gift, or offer thereof, and each such transaction made by any person, whether as principal proprietor, agent, servant, or employee.
- (EE) "Schedule I," "schedule II," "schedule III," "schedule IV," and "schedule V" mean controlled substance schedules I, II, III, IV, and V, respectively, established pursuant to section 3719.41 of the Revised Code, as amended pursuant to section 3719.43 or 3719.44 of the Revised Code.

- (FF) "Wholesaler" means a person who, on official written orders other than prescriptions, supplies controlled substances that the person has not manufactured, produced, or prepared personally and includes "wholesale distributor of dangerous drugs" as that term is defined in section 4729.02 of the Revised Code.
- (GG) "Animal shelter" means a facility operated by a humane society or any society organized under Chapter 1717. of the Revised Code or a dog pound operated pursuant to Chapter 955. of the Revised Code.
- (HH) "Terminal distributor of dangerous drugs" has the same meaning as given that term in section 4729.02 of the Revised Code.
- (II) "Category III license" is a license issued to a terminal distributor of dangerous drugs as set forth in section 4729.54 of the Revised Code.
- (JJ) "Cocaine," "hashish," and "felony drug abuse offense" have the same meanings as in section 2925.01 of the Revised Code.
- (KK) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.
- (LL) "LICENSED HEALTH PROFESSIONAL" MEANS A PERSON WHO HOLDS A CURRENT LICENSE TO PRACTICE HIS PROFESSION PURSUANT TO CHAPTERS 4715., 4723., 4725., 4729., 4731., AND 4741. OF THE REVISED CODE.

Section 3719.12

Procedure upon conviction; suspension or revocation of license or registration.

Unless a report has been made pursuant to section 2929.24 of the Revised Code, on the conviction of a manufacturer, wholesaler, practitioner, pharmacist, or nurse TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS, OR LICENSED HEALTH PROFESSIONAL AS DEFINED IN SECTION 3719.01 OF THE REVISED CODE of the violation of this chapter or Chapter 2925. of the Revised Code, the prosecutor in the case, on forms provided by the board, promptly shall report the conviction to the board that licensed or registered the manufacturer, wholesaler, practitioner, pharmacist, or nurse TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS, OR LICENSED HEALTH PROFESSIONAL to practice the manufacturer's, wholesaler's, practitioner's, pharmacist's, or nurse's TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS', OR LICENSED HEALTH PROFESSIONAL'S profession or to carry on the manufacturer's, wholesaler's, practitioner's, pharmacist's, or nurse's TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS', OR LICENSED HEALTH PROFESSIONAL'S business. Within thirty days of the receipt of this information, the board shall initiate action in accordance with Chapter 119. of the Revised Code to determine whether to suspend or revoke the license or registration.

Section 3719.121

Suspension of licenses or registrations of addicts LICENSED OR REGISTERED PERSON ADDICTED TO OR IMPROPERLY DISTRIBUTING CONTROLLED SUBSTANCES.

- (A) Except as otherwise provided in section 4723.28 or 4731.22 of the Revised Code, if a person who is a practitioner, nurse, pharmacist, manufacturer, or wholesaler LICENSED HEALTH PROFESSIONAL AS DEFINED IN SECTION 3719.01 OF THE REVISED CODE is or becomes addicted to the use of controlled substances, the board under which the person has been licensed or registered as a practitioner, nurse, pharmacist, manufacturer, or wholesaler LICENSED HEALTH PROFESSIONAL shall suspend the person's license or registration until the person offers satisfactory proof to the board that the person no longer is addicted to the use of controlled substances.
- (B) If the board under which a person has been licensed or registered as a practitioner, nurse, pharmacist LICENSED HEALTH PROFESSIONAL, TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS, manufacturer, or wholesaler determines that there is clear and convincing evidence that continuation of the person's professional practice or the person's method of distributing controlled substances presents a danger of immediate and serious harm to others, the board may suspend the person's license or registration without a hearing. Except as otherwise provided in sections 4715.30, 4723.281, and 4731.22 of the Revised Code, the board shall follow the procedure for suspending a license without a prior hearing in section

119.07 of the Revised Code. The suspension shall remain in effect, unless removed by the board, until the board's final adjudication order becomes effective, except that if the board does not issue its final adjudication order within ninety days after the hearing, the suspension shall be void on the ninety-first day after the hearing.

- (C) On receiving notification pursuant to section 2929.24 or 3719.12 of the Revised Code, the board under which a person has been licensed or registered as a practitioner, nurse, pharmacist LICENSED HEALTH PROFESSIONAL, TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS, manufacturer, or wholesaler immediately shall suspend the license or registration of that person on the person's plea of guilty to, a finding by a jury or court of the person's guilt of, or conviction of a felony drug abuse offense, a finding by a court of the person's eligibility for treatment in lieu of conviction, a plea of guilty to, or a finding by a jury or court of the person's guilt of, or the person's conviction of an offense in another jurisdiction that is essentially the same as a felony drug abuse offense, or a finding by a court of the person's eligibility for treatment in lieu of conviction in another jurisdiction. The board shall notify the holder of the license or registration of the suspension, which shall remain in effect, UNLESS REMOVED BY THE BOARD, until the board holds an adjudicatory hearing under Chapter 119. of the Revised Code BOARD'S FINAL ADJUDICATION ORDER BECOMES EFFECTIVE, EXCEPT THAT IF THE BOARD DOES NOT ISSUE ITS FINAL ADJUDICATION ORDER WITHIN NINETY DAYS AFTER THE HEARING, THE SUSPENSION SHALL BE VOID ON THE NINETY-FIRST DAY AFTER THE HEARING.

Section 4729.02 Definitions.

As used in this chapter:

- (A) "Pharmacy" means any area, room, rooms, place of business, department, or portion of any of the foregoing, where prescriptions are filled or where drugs, dangerous drugs, or poisons are compounded, sold, offered, or displayed for sale, dispensed, or distributed to the public.
- (B) To "practice pharmacy" means to interpret prescriptions, to compound or dispense drugs, dangerous drugs, and poisons, and related devices that under the "Federal Food, Drug, and Cosmetic Act" must be labeled for sale only on the order of a practitioner; to participate in drug selection pursuant to Chapter 3715. and section 4729.38 of the Revised Code; and to participate with practitioners in reviews of drug utilization.
- (C) "Drug" means:
- (1) Any article recognized in the official United States pharmacopeia, national formulary, or any supplement, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
 - (2) Any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
 - (3) Any article, other than food, intended to affect the structure or any function of the body of man or other animals;
 - (4) Any article intended for use as a component of any article specified in division (C)(1), (2), or (3) of this section; but does not include devices or their components, parts, or accessories.
- (D) "Dangerous drug" means any of the following:
- (1) Any drug that, under the "Federal Food, Drug, and Cosmetic Act," or Chapter 3715. or 3719. of the Revised Code, may be dispensed only upon a prescription;
 - (2) Any drug that contains a schedule V controlled substance and that is exempt from Chapter 3719. of the Revised Code, or to which that chapter does not apply;
 - (3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body.

- (E) "Federal drug abuse control laws" has the same meaning as in section 3719.01 of the Revised Code.
- (F) "Federal Food, Drug, and Cosmetic Act," means the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C. 301, as amended.
- (G) "Prescription" means an order for drugs or combinations or mixtures of drugs, written or signed by a practitioner or transmitted by a practitioner to a pharmacist by word of mouth, telephone, telegraph, or other means of communication and recorded in writing by the pharmacist.
- (H) "Practitioner" means any of the following:
 - (1) A person who is licensed pursuant to Chapter 4715., 4725., 4731., or 4741. of the Revised Code and authorized by law to write prescriptions for drugs or dangerous drugs;
 - (2) A professional association, as defined in section 1785.01 of the Revised Code, organized by an individual who is, or a group of individuals who are, licensed pursuant to Chapter 4715., 4725., 4731., or 4741. of the Revised Code and authorized by law to write prescriptions for drugs or dangerous drugs, or a corporation-for-profit formed under Chapter 1701. of the Revised Code by an individual or group of individuals so licensed and authorized;
 - (3) A partnership of individuals who are licensed pursuant to Chapter 4715., 4725., 4731., or 4741. of the Revised Code and authorized by law to write prescriptions for drugs or dangerous drugs;
 - (4) A limited liability company formed under Chapter 1705. of the Revised Code for the purpose of rendering a professional service covered by Chapter 4715., 4725., 4731., or 4741. of the Revised Code, the members, employees, other agents, and, if applicable, managers of which are licensed or otherwise legally authorized to render the covered professional service in this state and are authorized by law to write prescriptions for drugs or dangerous drugs;
 - (5) An advanced practice nurse authorized under section 4723.56 of the Revised Code to prescribe drugs and therapeutic devices.
- (I) "Poison" means any drug, chemical, or preparation likely to be deleterious or destructive to adult human life in quantities of four grams or less.
- (J) "Sale" and "sell" include delivery, transfer, barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal proprietor, agent, or employee.
- (K) "Wholesale sale" and "sale at wholesale" mean any sale in which the purpose of the purchaser is to resell the article purchased or received by the purchaser.
- (L) "Retail sale" and "sale at retail" mean any sale other than a wholesale sale or sale at wholesale.
- (M) "Retail seller" means any person that sells any dangerous drug to consumers without assuming control over and responsibility for its administration. Mere advice or instructions regarding administration do not constitute control or establish responsibility.
- (N) "Price information" means the price charged for a prescription for a particular drug product and, in an easily understandable manner, all of the following:
 - (1) The proprietary name of the drug product;
 - (2) The established (generic) name of the drug product;
 - (3) The strength of the drug product if the product contains a single active ingredient or if the drug product contains more than one active ingredient and a relevant strength can be associated with the product without indicating each active ingredient. The established name and quantity of each active ingredient are required if such a relevant strength cannot be so associated with a drug product containing more than one ingredient.
 - (4) The dosage form;

- (5) The price charged for a specific quantity of the drug product. The stated price shall include all charges to the consumer, including, but not limited to, the cost of the drug product, professional fees, handling fees, if any, and a statement identifying professional services routinely furnished by the pharmacy. Any mailing fees and delivery fees may be stated separately without repetition. The information shall not be false or misleading.
- (O) "Wholesale distributor of dangerous drugs" means a person engaged in the sale of dangerous drugs at wholesale and includes any agent or employee of that person authorized by that person to engage in the sale of dangerous drugs at wholesale.
- (P) "Manufacturer of dangerous drugs" means a person, other than a pharmacist, who manufactures dangerous drugs and who is engaged in the sale of those dangerous drugs within this state.
- (Q) "Terminal distributor of dangerous drugs" means a person, other than a practitioner, who is engaged in the sale of dangerous drugs at retail, or any person, other than a wholesale distributor or a pharmacist, who has in his possession, custody, or control dangerous drugs for any purpose other than for his own use and consumption, and includes pharmacies, hospitals, nursing homes, and laboratories and all other persons who procure dangerous drugs for sale or other distribution by or under the supervision of a pharmacist or medical practitioner.
- (R) "Promote to the public" means disseminating a representation to the public in any manner or by any means, other than by labeling, for the purpose of inducing, or that is likely to induce, directly or indirectly, the purchase of a dangerous drug at retail.
- (S) "Person" includes any individual, partnership, association, limited liability company, or corporation, the state, any political subdivision of the state, and any district, department, or agency of the state or its political subdivisions.
- (T) "Finished dosage form" has the same meaning as in division (A)(17) of section 3715.01 of the Revised Code.
- (U) As used in section 4729.38 of the Revised Code, "manufacturer" means a person who manufactures, as defined in division (A)(18) of section 3715.01 of the Revised Code.
- (V) "Generically equivalent drug" has the same meaning as in division (A)(20) of section 3715.01 of the Revised Code.
- (W) "Food" has the same meaning as in section 3715.01 of the Revised Code.
- ~~(W)~~(X) "Animal shelter" means a facility operated by a humane society or any society organized under Chapter 1717. of the Revised Code or a dog pound operated pursuant to Chapter 955. of the Revised Code.*
- (Y) "LICENSED HEALTH PROFESSIONAL" HAS THE SAME MEANING AS GIVEN THAT TERM IN SECTION 3719.01 OF THE REVISED CODE.

Section 4729.16

Revoke, suspend, place on probation, or refuse to grant or renew identification card; hearing, notice; penalty; return of card

- (A) The state board of pharmacy, after notice and hearing in accordance with Chapter 119. of the Revised Code, may revoke, suspend, place on probation, ~~PLACE LIMITATIONS ON,~~ or refuse to grant or renew an identification card OR CERTIFICATE OF REGISTRATION under this chapter, ~~or~~ AND may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Revised Code for a similar offense, or in the case of a violation of a section of the Revised Code that does not bear a penalty, a monetary penalty or forfeiture of not more than five hundred dollars, if the board finds a pharmacist or pharmacy intern:

- (1) Guilty of CONDUCT WHICH WOULD CONSTITUTE a felony or gross immorality;
 - (2) Guilty of dishonesty or unprofessional conduct in the practice of pharmacy;
 - (3) Addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy;
 - (4) Has been convicted of a misdemeanor related to, or committed in, the practice of pharmacy;
 - (5) Guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of sections 3715.52 to 3715.72, TITLE 29, or Chapter 2925., 3719., or 4729. of the Revised Code;
 - (6) Guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy;
 - (7) Guilty of knowingly lending his name to an illegal practitioner of pharmacy or having professional connection with an illegal practitioner of pharmacy; or
 - (8) Guilty of dividing or agreeing to divide remuneration made in the practice of pharmacy with any other individual, including, but not limited to, a practitioner or any owner, manager, or employee of a health care facility, rest home, or nursing home.
- (B) Any individual whose identification card OR CERTIFICATE OF REGISTRATION is revoked, suspended, or refused, shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of notice of such action.
- (C) As used in this section:
"Unprofessional conduct in the practice of pharmacy" includes, BUT IS NOT LIMITED TO, any of the following:
- (1) Advertising or displaying signs that promote dangerous drugs to the public in a manner that is false or misleading;
 - (2) The sale of any drug for which a prescription from a practitioner is required, without having received a prescription for the drug;
 - (3) KNOWINGLY Willfully and knowingly filling prescriptions or selling drugs for false or forged prescriptions;
 - (4) KNOWINGLY Willfully and knowingly failing to maintain complete and accurate records of all controlled substances DANGEROUS DRUGS received or dispensed in compliance with federal laws and regulations and state laws and rules;
 - (5) Obtaining any remuneration by fraud, misrepresentation, or deception;
 - (6) Obtaining or attempting to obtain a license issued under Chapter 3715. or 4729. of the Revised Code from the state board of pharmacy by fraud, misrepresentation, or deception;
 - (7) ~~Waiving the payment of all or any part of a deductible or copayment that an individual, pursuant to a health insurance or health care policy, contract, or plan that covers pharmaceutical services, would otherwise be required to pay for the services if the waiver is used as an enticement to a patient or group of patients to receive health care services from that provider.~~ VIOLATING ANY RULE OF THE BOARD;
 - (8) ~~Advertising that a pharmacy, pharmacist, or pharmacist intern will waive the payment of all or any part of a deductible or copayment that an individual, pursuant to a health insurance or health care policy, contract, or plan that covers pharmaceutical services, would otherwise be required to pay for the services.~~ CONDUCT WHICH INDICATES THE PHARMACIST OR PHARMACY INTERN IS UNFIT OR INCOMPETENT TO PRACTICE PHARMACY BY REASON OF NEGLIGENCE OR PHYSICAL OR MENTAL ILLNESS.

- (D) ~~Notwithstanding divisions (C)(7) and (8) of this section, sanctions shall not be imposed against any licensee who waives deductibles and copayments: PURSUANT TO ANY ADJUDICATION PROCEEDING INITIATED BY THE BOARD UNDER CHAPTER 119. OF THE REVISED CODE, THE BOARD MAY REQUIRE A PHARMACIST OR A PHARMACY INTERN TO SUBMIT TO PHYSICAL OR MENTAL EXAMINATION IF THE BOARD HAS REASONABLE CAUSE TO BELIEVE THAT THE INDIVIDUAL IS IMPAIRED.~~
- (1) ~~In compliance with the health benefit plan that expressly allows such a practice. Waiver of the deductibles or copays shall be made only with the full knowledge and consent of the plan purchaser, payer, and third-party administrator. Such consent shall be made available to the board upon request.~~
- (2) ~~For professional services rendered to any other person licensed pursuant to this chapter to the extent allowed by this chapter and the rules of the board.~~
- (E) THE BOARD MAY SUMMARILY SUSPEND OR MAY REFUSE TO GRANT A CERTIFICATE OF REGISTRATION OR IDENTIFICATION CARD TO A PERSON FOUND BY THE BOARD TO HAVE COMMITTED FRAUD, MISREPRESENTATION, OR DECEPTION IN APPLYING FOR OR SECURING ANY LICENSE OR CERTIFICATE ISSUED BY THE BOARD PURSUANT TO THIS CHAPTER. NOTWITHSTANDING ANY OTHER PROVISION OF THE REVISED CODE, NO APPLICATION FOR A CERTIFICATE OF REGISTRATION OR IDENTIFICATION CARD MADE UNDER THE PROVISIONS OF THIS CHAPTER MAY BE WITHDRAWN WITHOUT APPROVAL OF THE BOARD.
- (F) SECTION 121.22 OF THE REVISED CODE DOES NOT APPLY TO THE STATE BOARD OF PHARMACY WHEN DETERMINING WHETHER TO SUSPEND A LICENSE WITHOUT A PRIOR HEARING PURSUANT TO DIVISION (B) OF SECTION 3719.121 OF THE REVISED CODE. THE BOARD MAY UTILIZE A TELEPHONE CONFERENCE CALL FOR THE PURPOSE OF REVIEWING ALLEGATIONS THAT THE CONTINUATION OF A LICENSEE'S OR REGISTRANT'S PROFESSIONAL PRACTICE OR METHOD OF DISTRIBUTING CONTROLLED SUBSTANCES PRESENTS A DANGER OF IMMEDIATE AND SERIOUS HARM TO OTHERS AND MAY TAKE A VOTE TO SUSPEND A LICENSE OR REGISTRATION WITHOUT A PRIOR HEARING PURSUANT TO SECTION 3719.121 OF THE REVISED CODE.
- (G) (1) IN ANY ORDER ISSUED BY THE BOARD OF PHARMACY, THE BOARD MAY REQUIRE THE LICENSEE OR REGISTRANT TO REIMBURSE THE BOARD FOR ITS COSTS INCURRED FOR THE INVESTIGATION AND ADJUDICATION OF THE MATTER.
- (2) IN ANY ACTION FOR RECOVERY OF COSTS, PROOF OF THE BOARD'S DECISION SHALL BE CONCLUSIVE PROOF OF THE VALIDITY OF THE ORDER OF PAYMENT TO THE TERMS FOR PAYMENT.

Section 4729.27 Pharmacy must be conducted by legally registered pharmacist; APPROPRIATELY STAFFED AND EQUIPPED.

A person not a registered pharmacist, who owns, manages, or conducts a pharmacy as defined in section 4729.02 of the Revised Code, shall have in his employ, in full and actual charge of such pharmacy, a pharmacist registered under the laws of this state. Any registered pharmacist, who owns, manages, or conducts a pharmacy shall be personally in full and actual charge of such pharmacy, or shall have in his employ in full and actual charge of such pharmacy, a pharmacist registered under the laws of this state. THE PHARMACY MUST BE APPROPRIATELY STAFFED AND EQUIPPED TO PROVIDE THE PHARMACIST WITH THE ABILITY TO ENGAGE IN THE PRACTICE OF PHARMACY IN A SAFE AND EFFECTIVE MANNER.

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

The Board then discussed proposed S.B. 246 (outdated drugs) and directed that a copy of the testimony be forwarded to the Board members for their information.

-01/24/96-

RECORD OF THE PROCEEDINGS

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- RES. 96-142** The Board then reviewed H.B. 529. Staff was directed to monitor the legislation and express the Board's concerns regarding the fact that the legislation does not address the parties responsible for the third party logs and their content.
- 10:26 a.m. The Board was joined by Assistant Attorney General Mary Hollern for the purpose of creating a record pursuant to Revised Code Chapters 119. and 4729. in the matter of Cynthia Phurrough, R.Ph.; Cincinnati. Also joining the Board were Tim Benedict, Compliance Administrator, and Compliance Agent Fred Williams.
- 10:29 a.m. Board member Robert Cavendish arrived and joined the meeting.
- 10:43 a.m. The record in the matter was closed and the business meeting recessed. The Board left to meet with the exam candidates at the Rhodes Center and to have lunch prior to reconvening at 1:00 p.m.
- 1:44 p.m. The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing pursuant to Revised Code Chapters 119. and 4729. in the matter of Richard D. Sweet, R.Ph.; Parma.
- 2:00 p.m. Board member Suzanne Neuber arrived and joined the meeting.
- 3:08 p.m. The hearing was concluded and the record in the matter closed. The Board recessed for fifteen minutes.
- 3:34 p.m. The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing pursuant to Revised Code Chapters 119. and 4729. in the matter of Michael D. Quigley; Toledo.
- 6:00 p.m. The hearing was concluded and Board member Joseph Maslak excused himself due to previous business commitments. Mrs. Plant moved that the Board go into Executive Session for the purpose of deliberating on the testimony and evidence received in the matters of Cynthia Phurrough, R.Ph.; Richard D. Sweet, R.Ph.; and Michael D. Quigley. The motion was seconded by Mr. Repke and a roll call vote was conducted by President Lamping as follows: Cavendish-Yes, Hanna-Yes, Littlejohn-Yes, Miller-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.
- 6:30 p.m. The Executive Session was concluded and the meeting opened to the public. Mr. Hanna moved
- RES. 96-143** that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-950802-008)

In The Matter Of:

CYNTHIA F. PHURROUGH, R.Ph.

2677 Montana Avenue #24
Cincinnati, Ohio 45211
(R.Ph. No. 03-3-14316)

INTRODUCTION

THE MATTER OF CYNTHIA F. PHURROUGH CAME ON FOR CONSIDERATION ON JANUARY 24, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; WAYNE C. MILLER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

CYNTHIA F. PHURROUGH WAS NOT PRESENT NOR WAS SHE REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

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

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity letter dated August 2, 1995.
- (2) Exhibit 1A--Letter from Harry P. Hellings, Jr. dated August 21, 1995, with attachments as follows: Ohio State Board of Pharmacy Certificate of Registration, No. 14316, of Cynthia F. Phurrough; and pocket identification card, No. 03-3-14316, of Cynthia F. Phurrough, expiration date September 15, 1995.
- (3) Exhibit 1B--Pharmacist File Front Sheet of Cynthia Funk Phurrough showing original date of registration as July 31, 1981.
- (4) Exhibit 1C--Copy of letter from Nancy L. Little dated September 19, 1995; copy of check number 8643 of Cynthia F. Phurrough dated September 1, 1995; Renewal Application for Pharmacist License, No. 03-3-14316, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of Cynthia F. Phurrough dated September 1, 1995; copy of letter from Harry P. Hellings, Jr. dated August 21, 1995; copy of letter from Ralph E. Bouvette dated July 18, 1995; and copy of three-page Agreed Order of the Commonwealth of Kentucky, Kentucky Board of Pharmacy, Case No. 950505, in the matter of Cynthia F. Phurrough dated July 12, 1995.
- (5) Exhibit 3--Seven-page certified copy of Indictment in the Commonwealth of Kentucky, Kenton Circuit Court, Third Division, Case No. 95-CR-240, of Cynthia F. Phurrough and Claude E. Napier, seven counts dated from January 24, 1994, through March 17, 1995.
- (6) Exhibit 4--Certified copy of Commonwealth's Offer on a Plea of Guilty in the Kenton Circuit Court, Third Division, Case No. 95-CR-240, of Cynthia Phurrough offered on June 21, 1995; and two-page certified copy of Order on Guilty Plea in the Commonwealth of Kentucky, Sixteenth Judicial Circuit, Kenton Circuit Court, Third Division, Case No. 95-CR-00240-001, of Cynthia Phurrough dated June 28, 1995.
- (7) Exhibit 5--Copy of two-page Final Judgment in the Commonwealth of Kentucky, Sixteenth Judicial Circuit, Kenton Circuit Court, Third Division, Case No. 95-CR-00240-001, of Cynthia Phurrough dated August 16, 1995; and copy of two-page Order of Probation in the Commonwealth of Kentucky, Sixteenth Judicial Circuit, Kenton Circuit Court, Third Division, Case No. 95-CR-00240-001, of Cynthia Phurrough dated August 16, 1995.

Respondent's Exhibits:

- (1) None

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) On August 2, 1995, Cynthia F. Phurrough was notified by letter of her right to a hearing, her rights in such hearing, and her right to submit her contentions in writing.
- (2) As demonstrated by return receipt of August 8, 1995, Cynthia F. Phurrough received the letter of August 2, 1995, informing her of the allegations against her, and her rights.
- (3) Cynthia F. Phurrough, by and through her attorney, returned her certificate of registration and pocket identification card, received August 23, 1995; however, Cynthia F. Phurrough has not requested a hearing in this matter.
- (4) Records of the Board indicate that Cynthia F. Phurrough was originally licensed to practice pharmacy in the state of Ohio on July 31, 1981, pursuant to examination; and, on August 2, 1995, Cynthia F. Phurrough's license was summarily suspended in accordance with Section 3719.121(B) of the Ohio Revised Code.
- (5) Cynthia F. Phurrough did, during an unknown time period immediately preceding March of 1995, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Drug World Pharmacy, beyond the express or implied consent of the owner, to wit: Cynthia F. Phurrough stole the following controlled substances in the following amounts:

<u>Drug</u>	<u>Shortage</u>
Vicodin	11,315
Lortab	1,381
Lorcet Plus	741
Diazepam 2mg	580
Diazepam 5mg	1,881
Diazepam 10mg	10,890
Xanax .25mg	710
Xanax . 5mg	564

Such conduct is in violation of Section 2913.02 of the Ohio Revised Code and/or its Kentucky Revised Statutes equivalent.

- (6) Cynthia F. Phurrough did, during an indefinite and undetermined time period immediately preceding March of 1995, with purpose to commit theft of drugs, conspire with another person and/or plan or aid in planning the commission of said offense; and/or agree with another person that they both would engage in conduct that facilitates the commission of the theft of drugs, to wit: Cynthia F. Phurrough agreed with a male accomplice, and they each assisted the other, in a scheme to commit the theft of drugs from Cynthia F. Phurrough's employer whereby Cynthia F. Phurrough would remove controlled substances from the pharmacy and leave them in hidden places outside the pharmacy for pickup by her accomplice. Such conduct is in violation of Section 2923.01 of the Ohio Revised Code and/or its Kentucky Revised Statutes equivalent.

- (7) Cynthia F. Phurrough did, on various occasions immediately preceding March of 1995, knowingly sell controlled substances in an amount greater than one hundred times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: after stealing controlled substances from her employer, Cynthia F. Phurrough transferred them to another without prescription and not for a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(10) of the Ohio Revised Code and/or its Kentucky Revised Statutes equivalent.
- (8) On or about August 16, 1995, in the Commonwealth of Kentucky, Sixteenth Judicial Circuit, Kenton Circuit Court, Third Division, Case No. 95-CR-00240-001, Cynthia F. Phurrough was found guilty of Conspiracy to Obtaining a Controlled Substance by Fraud, a Class D Felony.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (8) of the Findings of Fact constitutes being guilty of a felony as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (5) through (7) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (7) and (8) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued August 2, 1995.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Cynthia F. Phurrough:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-3-14316, held by Cynthia F. Phurrough effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-3-14316, held by Cynthia F. Phurrough effective as of the date of the mailing of this Order.
- (C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-3-14316, held by Cynthia F. Phurrough effective as of the date of the mailing of this Order.

-01/24/96-

RECORD OF THE PROCEEDINGS

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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 certificate of registration to the offices of the state board of pharmacy within ten days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

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

MOTION CARRIED.

SO ORDERED.

Mr. Miller seconded the motion and it was approved (Aye-6/Nay-0/Abstain-1[Neuber]).

RES. 96-144 Mr. Miller moved that the Board approve the immediate reinstatement of Richard Sweet's license to practice pharmacy in Ohio and adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-951120-028)

In The Matter Of:

RICHARD DAVID SWEET, R.Ph.
5704 Onaway Oval
Parma, Ohio 44130
(R.Ph. No. 03-2-07715)

INTRODUCTION

THE MATTER OF RICHARD DAVID SWEET CAME TO HEARING ON JANUARY 24, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; WAYNE C. MILLER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

RICHARD DAVID SWEET WAS REPRESENTED BY JULES N. KOACH AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

(1) None

Respondent's Witnesses:

- (1) Harold Schwartz, Pharmacists Rehabilitation Organization, Inc.
- (2) Richard David Sweet, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Order of the State Board of Pharmacy, Docket No. D-940511-084, in the matter of Richard David Sweet dated January 31, 1995.
- (2) Exhibit 1A--Hearing Request letter from Jules Koach dated November 17, 1994,(sic) with attachments as follows: Two-page Petition for Hearing Upon Question of Reinstatement of License to Practice Pharmacy dated November 17, 1995; two-page Brief; copy of two-page letter from Diana Green dated November 11, 1995;and copy of Kaiser Permanente Alcohol/Chemical Dependency Program Treatment Contract of Richard Sweet dated October 16, 1995.
- (3) Exhibit 1B--Hearing Schedule letter dated November 20, 1995.
- (4) Exhibit 1C--Letter from Jules Koach dated November 29, 1995, with attachments as follows: Request to Advance Hearing Date Upon Petition For Reinstatement dated November 29, 1995; and three-page Brief.
- (5) Exhibit 1D--Letter from David L. Rowland dated December 4, 1995.
- (6) Exhibit 1E--Hearing Schedule letter dated December 22, 1995.

Respondent's Exhibits:

- (1) Five-page Hearing Brief of Richard D. Sweet dated January 9, 1996.
- (2) Two-page Request for Immediate Decision dated January 9, 1996.
- (3) Exhibit A--Five-page Affidavit of Diana Green signed and notarized on January 8, 1996, with attachments as follows: A.1-Copy of certificate from the State of Ohio, Counselor and Social Worker Board of Diana Yvonne Green, Licensed Social Worker, dated June 11, 1988, including pocket identification card of Diana Y. Green, expiration date June 11, 1996. A.2-Copy of certificate from the Ohio Credentialing Board for Chemical Dependency Professionals of Diana Y. Green, Chemical Dependency Counselor, III dated July 24, 1987. A.3-Copy of certificate from the Internationally Certified Alcohol and Drug Counselor of Diana Y. Green dated September 7, 1995. A.4-Two-page letter from Diana Green dated November 11, 1995, and copy of Kaiser Permanente Alcohol/Chemical Dependency Program Treatment Contract of Richard Sweet dated October 16, 1995. A.5-Copy of Kaiser Permanente Alcohol/Chemical Dependency Program Treatment Contract of Richard Sweet dated January 16, 1996.
- (4) Exhibit B--Two-page Affidavit of Antone F. Feo, Ph.D. with attachments as follows: B.1-Nine-page report of psychological evaluation of Richard Sweet dated September 28, 1995. B.2-Four-page Curriculum Vitae of Antone F. Feo, Ph.D.
- (5) Exhibit C--Three-page copy of Saint Vincent Charity Hospital and Health Center, Summary of Richard Sweet's Treatment at Rosary Center from May 18, 1994, to October 19, 1994.
- (6) Exhibit D--Certified Journal Entry in the Cuyahoga County Court of Common Pleas, Case No. CR-316422, of Richard Sweet dated June 5, 1995.
- (7) Exhibit E--Letter from Dan Finan dated October 24, 1995.
- (8) Exhibit F--Two-page handwritten letter from David P. Dylyn dated January, 1996.
- (9) Exhibit G--Certificate of continuing pharmaceutical education experience for Program No. 679-105-94-01 of Richard David Sweet dated September 7, 1994.
- (10) Exhibit H--Certificate of continuing pharmaceutical education experience for Program No. 680-071-90-005, of Richard Sweet dated September 14, 1994.
- (11) Exhibit I--Certificate of continuing pharmaceutical education experience for Program No. 679-105-94-02, of Richard David Sweet dated September 1, 1994.
- (12) Exhibit J--Copy of certificate of continuing pharmaceutical education experience for Program No. 688-421-93-001, of Richard Sweet dated September 30, 1994.
- (13) Exhibit K--Copy of certificate of continuing pharmaceutical education experience for Program No. 680-032-92-012, of Richard Sweet dated September 15, 1994.
- (14) Exhibit L--Copy of certificates of continuing pharmaceutical education experience for programs numbered and dated as follows: 680-073-95-23 dated December 7, 1995; 680-073-95-10 dated December 7, 1995; 680-073-95-08 dated December 7, 1995; and 680-073-95-04 dated December 7, 1995.

- (15) Exhibit M--Copy of certificates of continuing pharmaceutical education experience for programs numbered and dated as follows: 680-073-95-08 dated December 7, 1995; 680-073-95-04 dated December 7, 1995; 680-073-95-03 dated December 7, 1995; and 680-073-95-01 dated December 7, 1995.
- (16) Exhibit N--Copy of certificates of continuing pharmaceutical education experience for programs numbered and dated as follows: 680-073-95-038 dated November 21, 1995; 680-073-95-09 dated December 6, 1995; and 688-421-93-203 dated December 3, 1995.
- (17) Exhibit O--Two-page copy of Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of Richard Sweet dated February 6, 1995.
- (18) Exhibit P--Twelve-page copy of AA/NA/CA meeting attendance verification of Richard Sweet dated from February 1, 1995, through December 28, 1995.
- (19) Exhibit Q--Copies of twenty-five urine drug screen reports of Richard Sweet dated as follows: December 10, 1994; December 29, 1994; January 12, 1995; February 2, 1995; February 21, 1995; March 21, 1995; March 25, 1995; April 8, 1995; April 18, 1995; May 5, 1995; May 19, 1995; June 2, 1995; June 24, 1995; July 19, 1995; July 27, 1995; August 14, 1995; two-page original report, collection date of August 18, 1995; two-page original report, collection date of September 8, 1995; nine-page copy of report dated November 22, 1995, showing collection dates of September 8, 1995; September 26, 1995; October 17, 1995; October 27, 1995; and November 15, 1995; and five-page copy of report dated January 2, 1996, showing collection dates of November 15, 1995; November 24, 1995; December 8, 1995; and December 27, 1995.

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) Records of the Board indicate that Richard David Sweet's license to practice pharmacy in Ohio was suspended pursuant to the Order of the Board, Docket No. D-940511-084, dated January 31, 1995; and Richard David Sweet has complied with the terms and stipulations of that Order.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy hereby approves the reinstatement of Richard David Sweet's pharmacist identification card, No. 03-2-07715, to practice pharmacy in the state of Ohio and places him on probation for five years, effective as of the date of the mailing of this Order, with the following conditions:

- (A) Richard David Sweet must enter into a new contract, from the effective date of this Order, with a limited 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 screens shall be conducted at least twice a month for the first contract year and at least once a month for the remaining four contract years. The urine drug screens must report testing for alcohol and must also report testing for creatinine or specific gravity of the sample as the dilutional standard;
 - (2) regular attendance, a minimum of three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting is required during outpatient treatment and/or during aftercare;

- (3) the intervener/sponsor shall provide copies of all urine screens to the Ohio Board of Pharmacy in a timely fashion; and
- (4) the program shall immediately report to the Ohio Board of Pharmacy any violations of the contract and/or lack of cooperation.
- (B) Richard David Sweet must continue and abide by the treatment plan as prescribed by Dr. Kahl.
- (C) Richard David Sweet 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,
 - (2) documentation regarding any change in mental health care providers, medication, and/or progression of rehabilitation.
 - (3) a written description of his progress towards recovery and what he has been doing during the previous three months.
- (D) Other terms of probation are as follows:
 - (1) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that Richard David Sweet's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns.
 - (2) The Board further stipulates that Richard David Sweet may not serve as a responsible pharmacist.
 - (3) Richard David Sweet may not destroy, assist in, or witness the destruction of controlled substances.
 - (4) Richard David Sweet must abide by the contract from the treatment provider and any violation must be reported to the Board immediately.
 - (5) Richard David Sweet must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (6) Richard David Sweet must abide by the rules of the Ohio State Board of Pharmacy.
 - (7) Richard David Sweet must comply with the terms of this Order.

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

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Cavendish and approved by the Board (Aye-6/Nay-0/Abstain-1[Neuber]).

RES. 96-145 Mr. Cavendish moved that the Board permit Michael D. Quigley to sit for the licensure examination and if successful permit him to practice pharmacy with the following stipulations as set forth in the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-950217-037)

In The Matter Of:

MICHAEL D. QUIGLEY
2364 Meadowwood
Toledo, Ohio 43606
(D.O.B. 12/18/51)

INTRODUCTION

THE MATTER OF MICHAEL D. QUIGLEY CAME TO HEARING ON JANUARY 24, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

MICHAEL D. QUIGLEY WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Dale Fritz, Ohio State Board of Pharmacy
- (2) Michael D. Quigley, Respondent

Respondent's Witnesses:

- (1) Dr. Fred Karaffa, Shepherd Hill Hospital
- (2) Gary R. Rutherford, Pharmacists Rehabilitation Organization
- (3) Richard Kryc, Pharmacists Rehabilitation Organization
- (4) Phyllis Grauer, Pharmacists Rehabilitation Organization
- (5) George Perdue, Pharmacists Rehabilitation Organization
- (6) Nick Kallis, Pharmacists Rehabilitation Organization

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter dated February 17, 1995.
- (2) Exhibit 1A--Hearing Request letter dated March 1, 1995.
- (3) Exhibit 1B--Hearing Schedule letter dated March 7, 1995.
- (4) Exhibit 1C--Continuance Request letter via facsimile dated September 8, 1995.
- (5) Exhibit 1D--Hearing Schedule letter dated September 8, 1995.
- (6) Exhibit 1E--Hearing Schedule letter dated September 19, 1995.
- (7) Exhibit 2--Application for Examination as a Pharmacist of Michael D. Quigley received February 6, 1995.

- (8) Exhibit 3--Pharmacist File Front Sheet, No. 03-21-1429, of Michael D. Quigley showing original date of registration as August 4, 1975.
- (9) Exhibit 4--Five-page Order of the State Board of Pharmacy, Docket No. D-890921-051, in the matter of Michael D. Quigley dated December 18, 1989.
- (10) Exhibit 5--Four-page Order of the State Board of Pharmacy, Docket No. D-920918-022, in the matter of Michael D. Quigley dated December 16, 1992.
- (11) Exhibit 6--Five-page Order of the State Board of Pharmacy, Docket No. D-931022-022, in the matter of Michael D. Quigley dated March 14, 1994.
- (12) Exhibit 7--Pages 103 to 150 of the transcript of the proceedings before the Ohio State Board of Pharmacy in the matter of Michael D. Quigley held on October 23, 1989.

Respondent's Exhibits:

- (1) Exhibit A--Copy of two-page Pharmacists Rehabilitation Organization, Inc. Recovering Pharmacist's Contract of Mike Quigley dated March 6, 1992.
- (2) Exhibit B--Copy of two-page Pharmacists Rehabilitation Organization, Inc. Impaired Pharmacist's Contract of Mike Quigley dated May 18, 1989.
- (3) Exhibit C--Copies of four Pharmacists Rehabilitation Organization, Inc. Client Monitoring Sheets, Client Case No. 0038, of Michael D. Quigley as follows: page 1 dated from the week of June 28, 1992, through the week of September 27, 1992; page 2 dated from the week of March 15, 1992, through the week of June 28, 1992; page 3 dated from the week of October 13, 1991, through the week of March 8, 1992; and page 4 dated from the week of May 12, 1991, through the week of October 6, 1991.
- (4) Exhibit D--Copy of twelve-page AA/NA meeting attendance verifications of Michael D. Quigley dated from September of 1989 to October of 1992.
- (5) Exhibit E--Copy of letter from Richard Martin Friedmar dated May 2, 1991; copy of letter from Alan Hersh dated October 17, 1992; copy of letter from Mrs. R. (Jean) and Richard W. Quigley dated October 17, 1992; copy of letter from Richard W. Quigley, Jr. dated October 20, 1992; copy of letter from Robert J. Hoagland dated October 20, 1992; copy of letter from Dianne Nyitray, not dated; copy of letter from Richard C. Mitchell, III dated August 7, 1992; and copy of two-page letter from (name is illegible) dated October 16, 1992.
- (6) Exhibit F--Copy of letter from Harry Chisholm dated October 20, 1992; copy of letter from Paul C. Redmond dated October 20, 1992; copy of letter from Robert B. Forney dated November 8, 1989; and copy of letter from Fred N. Karaffa dated November 2, 1989.
- (7) Exhibit G--Copies of twenty-one continuing pharmaceutical education certificates numbered and dated as follows: 183-129-8901 dated February 2, 1989; 690-165-89002 dated February 27, 1989; 183-129-8908 dated October 11, 1989; 183-129-8906 dated August 1, 1989; 189-761-91-004 dated March 9, 1992; 183-129-8909 dated October 11, 1989; 680-302-90-075 dated March 20, 1992; 680-302-92-062 dated March 20, 1992; 680-302-87-080 dated March 20, 1992; 680-302-86-080 dated January 31, 1989; 680-073-90-06 dated April 5, 1992; 680-073-90-03 dated April 5, 1992; 680-073-90-01 dated April 5, 1992; 680-073-89-12 dated April 5, 1992; 680-073-89-10 dated April 5, 1992; 680-073-89-09 dated April 5, 1992; 680-073-89-08 dated April 5, 1992; 680-073-89-07 dated April 5, 1992; 682-327-91-201 dated March 6, 1992; 680-073-89-06 dated April 5, 1992; and 680-071-90-002 dated March 30, 1992.
- (8) Exhibit H--Copies of four Pharmacists Rehabilitation Organization, Inc. Client Monitoring Sheets, Client Case No. 0038, of Michael D. Quigley as follows: page 1 dated from the week of October 4, 1992, through the week of February 28, 1993; page 2 s dated from the week of March 7, 1993, through June 27, 1993; page 3 dated from the week of July 4, 1993, through September 26, 1993; and page 4 dated from the week of October 3, 1993, through December 26, 1993.
- (9) Exhibit I--Copy of six-page AA/NA meeting attendance verifications of Michael D. Quigley dated from October of 1992 through December of 1993.

- (10) Exhibit J--Copy of letter from Carol A. Bobak dated December 29, 1993; copy of letter from Mrs. R. (Jean) and Richard W. Quigley dated November 27, 1993; copy of letter from Richard W. Quigley, Jr. dated November 24, 1993; copy of letter from Robert J. Hoagland dated November 25, 1993; copy of first quarter grade card of Bryan Quigley, not dated; and copy of letter from Ms. Charlotte Best and Ms. Merrie-Ellen Vogan.
- (11) Exhibit K--Copy of certificate of completion in the Pharmacist Recovery Network Convention of Michael Quigley dated October 23, 1993; copies of six continuing pharmaceutical education certificates numbered and dated as follows: 189-761-92-008 dated June 7, 1993; 692-424-92-002 dated June 7, 1993; 189-761-92-009 dated June 7, 1993; 692-424-92-001 dated June 7, 1993; 189-761-92-006 dated June 7, 1993; 692-424-93-003 dated June 1, 1993; and copies of five letters from James G. Alexander dated June 7, 1993 regarding successful completion for the following classes: Recent Advances in ACE Inhibitor Therapy; Therapeutic Drug Monitoring-Class 1 Antiarrhythmics; Alzheimer's Disease: 1906-1991 Yesterday's Future . . . Tomorrow's Reality?; The Pharmacology of Nicotine and Nicotine Replacement in Smoking Cessation Therapy; and Low Estrogen Oral Contraceptives.
- (12) Exhibit L--Copies of pages 1, 6, and 7 of the transcript of proceedings in the Lucas County Court of Common Pleas, Case Numbers CR89-6349 and CR89-7311, in the matter of Michael Quigley on October 13, 1989.
- (13) Exhibit M--Copy of two-page letter from Joseph C. MacMillan dated July 7, 1993; copy of letter from Graeme M. Cunningham dated April 19, 1993; and copy of letter from David E. Smith dated May 13, 1993.
- (14) Exhibit N--Copy of three-page Anchor Hospital, Talbott Marsh Recovery System, Admission Note/Psychiatric Assessment of Michael Quigley on October 5, 1993.
- (15) Exhibit O--Copy of two-page Anchor Hospital, Talbott Marsh Recovery System, Discharge Summary of Michael D. Quigley dated October 7, 1993.
- (16) Exhibit P--Copy of three-page O.A.S.I.S. Counseling Center, Confidential Psychological Evaluation dated October 7, 1993.
- (17) Exhibit Q--Copies of the following: Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheet, Client Case No. 0038, for the period of January 2, 1994, to March 27, 1994; Pharmacists Rehabilitation Organization, Inc. Client Monitoring Sheet, Client Case No. 0038, dated from the week of January 2, 1994, through the week of March 27, 1994; urine drug screen report dated February 16, 1994; urine drug screen report dated March 19, 1994; urine drug screen report dated January 7, 1994; Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheet dated from April 3, 1994, to June 26, 1994; Pharmacists Rehabilitation Organization, Inc. Client Monitoring Sheet dated from the week of April 3, 1994, through the week of June 26, 1994; urine drug screen report dated June 8, 1994; urine drug screen report dated July 5, 1994; Pharmacists Rehabilitation Organization, Inc. Client Monitoring Sheet dated from July 3, 1994, to October 1, 1994; Pharmacists Rehabilitation Organization, Inc. Client Monitoring Sheet dated from the week of July 3, 1994, to the week of September 25, 1994; urine drug screen report dated September 13, 1994; Pharmacists Rehabilitation Organization, Inc. Client Monitoring Sheet dated from October 2, 1994, through December 31, 1994; Pharmacists Rehabilitation Organization, Inc. Client Monitoring Sheet dated from the week of October 2, 1994, through the week of December 25, 1994; urine drug screen report dated October 6, 1994; urine drug screen report dated December 12, 1994; Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheet dated from January 1, 1995, to April 1, 1995; Pharmacists Rehabilitation Organization, Inc. Client Monitoring Sheet dated from the week of January 1, 1995, through the week of March 26, 1995; urine drug screen report dated March 9, 1995; Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheet dated from April 2, 1995, to June 30, 1995; Pharmacists Rehabilitation Organization, Inc. Client Monitoring Sheet dated from the week of April 2, 1995, through June 25, 1995; urine drug screen report dated June 23, 1995; and Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheet dated from October 1, 1995, to December 31, 1995.

- (18) Exhibit R--Copy of certificate from the University of Utah of Michael D. Quigley for participation in Alcoholism and other Drug Dependencies dated June 24, 1994; Copy of certificate from the University of Utah of Michael D. Quigley for participation in Alcoholism and other Drug Dependencies dated June 19, 1994; and continuing pharmaceutical education certificate numbered 679-105-95-13 dated May 6, 1995.
- (19) Exhibit S--Copy of cover and pages 18 and 19 of Dateline N. B. C. Transcript, No. 120, dated August 11, 1994.
- (20) Exhibit T--Copy of Judgment Entry in the Lucas County Common Pleas Court, Case No. CR89-7311, of Michael D. Quigley, date illegible; copy of two-page letter from Carol McKeon dated November 1, 1995; copy of letter from Fred N. Karaffa dated November 1, 1995; copy of two-page letter from Gary A. Bunting dated November 2, 1995; copy of letter from Nick A. Kallis dated August 29, 1995; copy of letter from H. Ken Lawson dated September 6, 1995; copy of letter from Curtis D. Black dated September 17, 1995; and letter from William Knopp, not dated.
- (21) Exhibit U--Seventeen-page Hospital Formulary Manual for Tylenol, by McNeil Consumer Products Company.

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 Michael D. Quigley submitted an Application for Examination as a Pharmacist on or about February 6, 1995.
- (2) Records further indicate that Michael D. Quigley was originally licensed to practice pharmacy in the state of Ohio pursuant to examination on August 4, 1975; and Michael D. Quigley was the responsible pharmacist at Larry's Pharmacy, 12 E. Bancroft Street, Toledo, Ohio 43620. On December 18, 1989, the State Board of Pharmacy found that:
 - (a) Michael D. Quigley is addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.
 - (b) Michael D. Quigley did, on or about February 6, 1989, and dates prior thereto, obtain a dangerous drug by committing a theft offense, to wit: Michael D. Quigley stole the following Schedule II controlled substances from Larry's Pharmacy:

<u>Drug</u>	<u>Quantity</u>
Percocet	62,060
Levo-Dromoran	5,019
Dolophine 5mg	4,883
Percodan	1,018
Tylox	802
Demerol 50mg	191
MS Contin 30mg	185

Such conduct is in violation of Section 2925.21 of the Ohio Revised Code.

- (3) On December 18, 1989, the Board found Michael D. Quigley to be guilty of a felony and gross immorality, guilty of dishonesty and unprofessional conduct in the practice of pharmacy, and guilty of willfully violating provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code. As a result of this conduct the Board revoked Michael D. Quigley's pharmacist identification card, license number 03-2-11429.

- (4) Michael D. Quigley did, on or about July 27, 1992, submit an Application for Examination as a Pharmacist. On December 16, 1992, the Board affirmed its previous findings in that Michael D. Quigley has been guilty of a felony and gross immorality, guilty of dishonesty and unprofessional conduct, and guilty of willfully violating Chapters 2925., 3719., or 4729., of the Revised Code. The Board also found that Michael D. Quigley did, on or about October 30, 1989, enter a guilty plea to Trafficking in Drugs, a third degree felony, in the Common Pleas Court of Lucas County, Ohio. Michael D. Quigley was sentenced to two years imprisonment; ordered to pay a mandatory fine of \$2,500.00; and ordered to pay \$20,944.77 in restitution. The Board further found that Michael D. Quigley was not of good moral character and habits as provided in Rule 4729-5-04 of the Ohio Administrative Code. As a result, the Board denied the issuance of a certificate of registration or identification card, and therefore denied the Application for Examination as a Pharmacist.
- (5) Michael D. Quigley did, on or about September 2, 1993, submit an Application for Examination as a Pharmacist, and on March 14, 1994, his application was again denied.
- (6) Michael D. Quigley has submitted sufficient evidence to prove that he has not used mind-altering substances since February of 1989, and he has continued to work a successful recovery program since 1989. Michael D. Quigley is now of good moral character and habits.

ACTION OF THE BOARD

Pursuant to Sections 4729.07, 4729.08, and 4729.16 of the Ohio Revised Code, the State Board of hereby approves the Application for Examination as a Pharmacist submitted by Michael D. Quigley. However, Michael D. Quigley must submit a new application and if he successfully completes the examinations and becomes licensed to practice pharmacy in Ohio, his identification card will be placed on probation for five years, effective as of the date of registration. The terms of probation are as follows:

- (A) Michael D. Quigley must enter into a new contract, prior to registration, with a limited treatment provider acceptable to the Board, for the duration of the probation period and, upon signing, submit a copy of the contract to the Board office. The contract must provide that:
 - (1) random, observed urine screens shall be conducted at least twice a month for the first contract year and at least once a month for the remaining four contract years. The urine drug screens must report testing for alcohol and must also report testing for creatinine or specific gravity of the sample as the dilutional standard;
 - (2) regular attendance, a minimum of three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting is required during outpatient treatment and/or during aftercare;
 - (3) the intervener/sponsor shall provide copies of all urine screens to the Ohio Board of Pharmacy in a timely fashion; and
 - (4) the program shall immediately report to the Ohio Board of Pharmacy any violations of the contract and/or lack of cooperation.
- (B) Michael D. Quigley 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:

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- (1) The written report and documentation provided by the treatment program pursuant to the contract, and
 - (2) a written description of his progress towards recovery and what he has been doing during the previous three months.
- (C) Other terms of probation are as follows:
- (1) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that Michael D. Quigley's pharmacist identification card will not be in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns throughout the probation period.
 - (2) The Board further stipulates that Michael D. Quigley may not serve as a responsible pharmacist while on probation.
 - (3) Michael D. Quigley may not destroy, or may not assist in or witness the destruction of controlled substances while on probation.
 - (4) Michael D. Quigley must abide by the contract from the treatment provider and any violation must be reported to the Board immediately.
 - (5) Michael D. Quigley must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (6) Michael D. Quigley must abide by the rules of the Ohio State Board of Pharmacy.
 - (7) Michael D. Quigley must comply with the terms of this Order.

Michael D. Quigley 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 the period of probation, the Board may revoke probation for a violation occurring during the probation period.

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

MOTION CARRIED.

SO ORDERED.

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

6:35 p.m. The meeting was recessed until Thursday, January 25, 1996 at 9:30 a.m.

THURSDAY, JANUARY 25, 1996

9:30 a.m. The State Board of Pharmacy reconvened in Room 1914, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Paul F. Lamping, R.Ph. (President); Suzanne L. Neuber, R.Ph. (Vice-President); Robert Cavendish, R.Ph.; Joseph Maslak, R.Ph.; Wayne Miller, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

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The Board was joined by Tim Benedict, Compliance Administrator, and Robert Cole, Compliance Supervisor. The fiscal impact of Senate Bill 2 that was adopted by the Legislature last year was discussed with the Board.

9:45 a.m. Board member Amonte Littlejohn arrived and joined the meeting.

10:05 a.m. The Board was joined by William Winsley, Assistant Executive Director, and the following representatives of the Ohio Society of Health-System Pharmacists:

John Armitstead, R.Ph.; Frank Krivanek, R.Ph.; Jeffrey Lewis, R.Ph.;
Nancy Lobas, R.Ph.; Bob Parsons, R.Ph.; David Smeenck, R.Ph.; Dave
Stillwell, R.Ph.; and Peter Vonderau, R.Ph.

Board staff provided the guests with an update on the Advanced Practice Nurse pilot projects; automated drug delivery systems; patient records confidentiality, and license transfer (reciprocity). Other items discussed included the licensing of pharmacy residents, inpatient automation experiences ; and outpatient robotics.

11:30 a.m. The meeting with the Ohio Society of Health-System Pharmacists was concluded and the Board recessed for five minutes.

11:40 a.m. The business meeting was reconvened. Mr. Maslak left for personal reasons.

RES. 96-146 The Board considered the motion for reconsideration in the matter of Eric Vogelsong. Mrs. Plant moved that the Board notify Mr. Vogelsong's attorney that the Board no longer has jurisdiction in the matter and that it is now in the hands of the appeals court. The motion was seconded by Mr. Cavendish and approved (Aye-6/Nay-0).

RES. 96-147 Mrs. Plant moved that the Board appoint the following individuals to the 1996 Ad Hoc Advisory Committee on Rule Review:

Ohio State Board of Pharmacy
Suzanne Neuber, R.Ph. - Chair
Amonte Littlejohn, R.Ph.
One Compliance Specialist
Ohio Pharmacists Association
Randall Myers, R.Ph.; Vandalia
James Turner, R.Ph.; Ada
Gregory Wood, R.Ph.; Canton
Kent Zellner, R.Ph.; Tiffin
Ohio Society of Health-System Pharmacists
Diane Gary; New Carlisle
Elizabeth (Betty) Gregg; Columbus
Gary Greiner; Westerville
Michael Dick; New Breman

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

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- RES. 96-148** Mrs. Plant moved that the following individuals be appointed to the special subcommittee of the 1996 Ad Hoc Advisory Committee on Rule Review for the purpose of reviewing Ohio Administrative Code Chapter 4729-3 (Pharmacy Practice-Internship):

Ohio State Board of Pharmacy - Wayne Miller - Chair
Ohio Northern University - Dr. Metta Lou Henderson
Ohio State University - Ken Hale, R.Ph.
University of Cincinnati - J. Richard Wuest, Pharm. D.
Ohio Pharmacists Association
Greg Braylock, Pharmacy Intern
Howard Faust, R.Ph.
Sujata Potter, R.Ph.

The motion was seconded by Mrs. Neuber and approved (Aye-6/Nay-0).

- RES. 96-149** Staff presented a draft of the language that the attorneys for IBM had agreed to include in the "PRE-SCRIBE" user section of licensing agreements for prescribers. Mrs. Plant moved that the following statement be approved by the Board to be included in the users section of the "PRE-SCRIBE" license and the pilot project authorized as proposed by ISSC (Integrated Systems Solutions Corporation) in their letter dated November 21, 1995.

Notice to Ohio Users

In response to a request for interpretation, the Ohio State Board of Pharmacy has determined that an Ohio pharmacist may accept, without further verification of the prescriber's identity needed, prescriptions issued through use of the PRE-SCRIBE system only if the prescribers, regardless of the location of their practice, review a daily log of prescription drug orders, both new and refill, transmitted pursuant to the PRE-SCRIBE system and certify to the authenticity and accuracy of such prescription orders by manually signing each daily log in the same manner as the prescriber would sign a check or legal document. Such review and signature must be completed within twenty-four (24) hours of the transmission of the prescription drug order. Such daily logs must be made available to persons entitled to review records of prescription drugs under Ohio law, and shall be maintained at the practice location for a period of three (3) years from the date of issuing a new or refill prescription. Failure of a prescriber transmitting prescriptions to Ohio pharmacies through the use of the PRE-SCRIBE system to comply with this record-keeping system could result in the termination of such prescriber's license to use the PRE-SCRIBE software.

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

- RES. 96-150** Board member Joseph Maslak returned to the meeting. The Board then considered the applications of the following in-state continuing pharmacy education providers for approval:

Kerry Miller; Canfield	New
Ritzman Pharmacies, Inc.; Wadsworth	New
NW Ohio Developmental Center; Toledo	New
Adherence, Inc.; Cincinnati	New
Memorial Hospital; Fremont	New
Pharmacists for Life International; Powell	036-238
Upper Valley Med Ctrs-Stouder Mem Hosp; Troy	036-277

Mrs. Neuber moved that the applications be approved. The motion was seconded by Mrs. Plant and approved by the Board (Aye-7/Nay-0).

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RES. 96-151 The Executive Director reported that the license of Donald A. Migliore (R.Ph. 03-2-08414) was renewed on January 2, 1996 following dismissal on December 29, 1995 of the appeal filed in Mahoning County Court of Common Pleas.

The Board then discussed meeting with the Directors of Pharmacy Operations for community pharmacies operating in Ohio before the end of the fiscal year. The meeting held May 17, 1995 was reviewed and staff was directed to plan another meeting within the next two months. Mr. Maslak will work with the staff to schedule and plan the meeting.

12:03 p.m. The Board recessed for lunch.

1:08 p.m. The Board reconvened in Room 1914 and was joined by Assistant Attorney General Mary Hollern. Mr. Miller moved that the Board go into Executive Session for the purpose of discussing pending and imminent court matters. The motion was seconded by Mr. Maslak and a roll call vote was conducted by President Lamping as follows: Cavendish-Yes, Littlejohn-Yes, Maslak-Yes, Miller-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

1:12 p.m. The Executive Session was concluded and the meeting opened to the public. Mrs. Plant moved

RES. 96-152 that the Board approve the following settlement agreement in the matter of Robert J. Yane, R.Ph.:

**PROPOSED
SETTLEMENT AGREEMENT**

WITH

THE STATE BOARD OF PHARMACY
(DOCKET NO. D-920701-002)

IN THE MATTER OF:

ROBERT J. YANE, R.PH.
1538 TAMARISK TRAIL
POLAND, OHIO 44514
(R.PH. NO. 03-1-12301)

This SETTLEMENT AGREEMENT is entered into by and between ROBERT J. YANE (hereinafter "MR. YANE") and the OHIO STATE BOARD OF PHARMACY (hereinafter "THE BOARD") a state agency charged with enforcing Chapter 4729 of the Ohio Revised Code, the Pharmacy Practice Act and Dangerous Drug Distribution Act.

MR. YANE voluntarily enters into this AGREEMENT being fully informed of his rights afforded under Chapter 119 of the Ohio Revised Code, including the right to appeal adverse rulings of THE BOARD under O.R.C. §119.12. MR. YANE acknowledges that by entering into this AGREEMENT he has waived his rights under Chapter 119.

WHEREFORE, the parties, in consideration of the mutual covenants and promises contained herein, and in lieu of any further formal proceedings at this time, and intending to be bound by said covenants, agree as follows:

- (1) MR. YANE hereby agrees to dismiss both his appeal, Case No. 95 CA 35 and his declaratory judgment action, Case No. 95-CV-1571 with prejudice.

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- (2) THE BOARD hereby modifies its Order of April 15, 1994 in the following manner: THE BOARD modifies the monetary penalty from twenty-five thousand dollars (\$25,000) to eleven thousand five hundred dollars (\$11,500.00) to be paid as follows: \$1500 due upon the signing of this AGREEMENT, and \$1000 to be paid each month thereafter until the balance of the fine has been paid. The monetary penalty should be made payable to the "Treasurer, State of Ohio." The monthly payments shall commence on March 15, 1996 and should be mailed to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.
- (3) MR. YANE, with intention of binding himself and his successors in interest and assigns, hereby RELEASES, and holds harmless from liability and forever discharges the State of Ohio, THE BOARD, the Ohio Attorney General, and any and all of their present and former members, officers, attorneys, agents and employees, personally and in their official capacities, from any and all claims, demands, causes of actions, judgments, or executions that MR. YANE ever had, or now has or may have, known or unknown, or that anyone claiming through or under him may have or claim to have, created by, or arising out of the allegations or charges filed by THE BOARD against MR. YANE, setforth in the Notice of Opportunity for Hearing.
- (4) MR. YANE acknowledges that he is and has been represented by counsel and that he is satisfied with his counsel's representation. MR. YANE further acknowledges that he has had an opportunity to ask questions concerning the terms of this AGREEMENT and that all questions asked have been answered in a satisfactory manner.
- (5) This AGREEMENT embodies the entire agreement between and of the parties. There are no express or implied promises, guarantees, terms, covenants, conditions, or obligations other than those contained herein; and this AGREEMENT supersedes all previous communications, representations or agreements, either verbal or written, between the parties.
- (6) The parties hereto acknowledge that this AGREEMENT shall be considered a public record as that term is used in O.R.C. §149.43.

In witness thereof, the parties have set their hands to this AGREEMENT this _____ day of _____, 1996 and shall become effective on the last date of signature below.

ROBERT J. YANE

Date of Signature

JEFFREY FLECK
Attorney for Robert J. Yane

Date of Signature

PAUL F. LAMPING, President
Ohio State Board of Pharmacy

Date of Signature

MARY L. HOLLERN
Assistant Attorney General
Attorney for State Board of Pharmacy

Date of Signature

The motion was approved (Aye-7/Nay-0) following a second by Mrs. Neuber.

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- 1:15 p.m. The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing pursuant to Revised Code Chapters 119. and 4729. in the matter of Richard L. Jarvis, R.Ph., Centerville.
- 3:42 p.m. The hearing was concluded and the record closed. The Board recessed for ten minutes.
- 3:52 p.m. The Board was joined by Assistant Attorney General Mary Hollern for the purpose of creating a record pursuant to Revised Code Chapters 119. and 4729. in the matter of Kevin M. Riley, R.Ph.; Fairfield.
- 4:04 p.m. The record was closed and Mr. Repke moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony received in the matters of Richard L. Jarvis, R.Ph.; Centerville, and Kevin M. Riley, R.Ph.; Fairfield. The motion was seconded by Mr. Maslak and a roll call vote was conducted by President Lamping as follows: Cavendish-Yes, Littlejohn-Yes, Maslak-Yes, Miller-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.
- 4:55 p.m. The Executive Session was concluded and the meeting opened to the public. Mr. Maslak moved
- RES. 96-153** that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-941223-029)

In The Matter Of:

RICHARD L. JARVIS, R.Ph.
6381 Seton Hill
Centerville, Ohio 45459
(R.Ph. No. 03-1-11135)

INTRODUCTION

THE MATTER OF RICHARD L. JARVIS CAME TO HEARING ON JANUARY 25, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

RICHARD L. JARVIS WAS REPRESENTED BY TIMOTHY N. TYE, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Frederick C. Williams, Ohio State Board of Pharmacy
- (2) Detective Gary Gabringer, Dayton Police Department
- (3) William McMillen, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Mrs. Jane Jarvis, Respondent's Wife

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity letter dated December 23, 1994.
- (2) Exhibit 1A--Letter from Timothy N. Tye dated December 28, 1994; identification card, No. 03-1-11135, of Richard L. Jarvis, expiration date September 15, 1995; and Ohio State Board of Pharmacy Certificate of Registration, No. 11135.
- (3) Exhibit 1B--Hearing Request letter dated January 5, 1995.
- (4) Exhibit 1C--Hearing Schedule letter dated January 10, 1995.
- (5) Exhibit 1D--Hearing Schedule letter dated March 9, 1995.
- (6) Exhibit 1E--Pharmacist File Front Sheet of Richard Lee Jarvis showing original date of registration as March 18, 1975; and Renewal Application for Pharmacist License, No. 03-1-11135, for a license to practice pharmacy in Ohio from September 15, 1994, to September 15, 1995, of Richard L. Jarvis dated June 27, 1994.
- (7) Exhibit 1F--Two-page letter from Timothy N. Tye dated April 17, 1995, with the following attachments: copy of seven-page Psychological Report of Eugene S. Cherry, Ph.D. dated January 23, 1995; copy of Wechsler Memory Scale of Richard Jarves (sic) dated January 6, 1995; and copy of Extended Score Report dated January 6, 1995; copy of letter from Tom Mowbray dated February 10, 1995; copy of letter from Robert B. Manley dated February 2, 1995; and copy of letter from Richard W. Boyd dated January 20, 1995.
- (8) Exhibit 1G--Hearing Schedule letter dated April 25, 1995.
- (9) Exhibit 1H--Addendum Notice dated August 21, 1995.
- (10) Exhibit 1I--Addendum Notice dated August 31, 1995.
- (11) Exhibit 1J--Letter from Timothy N. Tye dated August 24, 1995.
- (12) Exhibit 1K--Continuance Request letter dated September 5, 1995.
- (13) Exhibit 1L--Hearing Schedule letter dated September 6, 1995.
- (14) Exhibit 1M--Continuance Request letter dated January 5, 1996.
- (15) Exhibit 1N--Copy of letter from David L. Rowland dated January 9, 1996.
- (16) Exhibit 1O--Hearing Schedule letter dated January 22, 1996.
- (17) Exhibit 1P--Application for Registration as a Terminal Distributor of Dangerous Drugs of Medicine Shoppe dated December 1, 1989, with attached copy of Certificate of Custody of Record of Incorporation and Miscellaneous Filings dated November 20, 1989, and copy of the Articles of Incorporation of Traucht Enterprises, Inc. dated November 17, 1989; Renewal Applications for DDD License, No. 02-607300, for a Terminal Distributor of Dangerous Drugs License for the years of 1991 and 1992; Application for Registration as a Terminal Distributor of Dangerous Drugs of Medicine Shoppe dated May 14, 1993, with attached copy of Certificate of Custody of Record of Incorporation and Miscellaneous Filings dated November 20, 1989, copy of the Articles of Incorporation of Traucht Enterprises, Inc. dated November 17, 1989, and copy of Original Appointment of Statutory Agent dated November 17, 1989; and Renewal Applications for DDD License, No. 02-607300, for a Terminal Distributor of Dangerous Drugs License for the years of 1993 through 1996.
- (18) Exhibit 2--Two-page Medical Expenses report of The Medicine Shoppe regarding patient Jane Jarvis dated May 12, 1993.
- (19) Exhibit 2A--Prescription No. 3209347.
- (20) Exhibit 2B--Prescription No. 3214033.
- (21) Exhibit 2C--Prescription No. 4211374.
- (22) Exhibit 2D--Prescription No. 4214983.
- (23) Exhibit 2E--Prescription No. 4216843.
- (24) Exhibit 2F--Prescription No. 4217438.
- (25) Exhibit 2G--Prescription No. 5213590.
- (26) Exhibit 3--Handwritten Statement of Rick Jarvis signed and notarized on May 12, 1993.

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- (27) Exhibit 4--One hundred thirty page copy of Prescription Daily Audits of The Medicine Shoppe dated from January 5, 1993 (sic 1994), through December 12, 1994.
- (28) Exhibit 4A--Five-page list of prescriptions filled for Walter Johnson by R.Ph. Rick Jarvis dated from January 5, 1994, through December 12, 1994.
- (29) Exhibit 4B--Three-page copy of Medical Expenses report of The Medicine Shoppe regarding patient Walter Johnson dated November 28, 1994.
- (30) Exhibit 5--Copy of handwritten Statement of Paul Brammer, M.D. signed and notarized on December 2, 1994.
- (31) Exhibit 6--Copy of handwritten Statement of Benjamin J. Gilliotte, M.D. signed and notarized on December 2, 1994.
- (32) Exhibit 7A--Copy of handwritten Statement of Richard Jarvis signed and notarized on December 12, 1994.
- (33) Exhibit 7B--Copy of handwritten Statement of Richard Jarvis signed and notarized on December 12, 1994.
- (34) Exhibit 8--Letter from Michael T. Kunesh dated February 15, 1995.
- (35) Exhibit 9--Prescription No. 6185158 and Prescription No. 6185159.
- (36) Exhibit 10--Three-page Medical Expenses report of The Medicine Shoppe regarding patient Marie Cooper dated August 21, 1995.
- (37) Exhibit 11--Prescription No. 6212608.
- (38) Exhibit 12--Prescription No. 6214201.
- (39) Exhibit 13--Prescription No. 6214202.
- (40) Exhibit 14--Copy of handwritten statement of Walter L. Johnson dated December 12, 1994.

Respondent's Exhibits:

- (1) Exhibit A--Seven-page Psychological Report of Richard Jarvis by Eugene S. Cherry, Ph.D. dated January 23, 1995; copy of Wechsler Memory Scale of Richard Jarvis (sic) dated January 6, 1995; and copy of Extended Score Report dated January 6, 1995.
- (2) Exhibit B--Letter from Tom Mowbray dated February 10, 1995.
- (3) Exhibit C--Letter from Robert B. Manley dated February 2, 1995.
- (4) Exhibit D--Letter from Richard W. Boyd dated January 20, 1995.

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 Richard L. Jarvis was originally licensed to practice pharmacy in the state of Ohio on March 18, 1975; and, on December 23, 1994, Richard L. Jarvis' license was summarily suspended in accordance with Section 3719.121(B) of the Ohio Revised Code.
- (2) Richard L. Jarvis did, on or about the following dates, intentionally make and/or knowingly possess false or forged prescriptions, to wit: Richard L. Jarvis forged the following prescriptions to cover for the controlled substances he was giving his wife, Jane Jarvis, without prescriptions from a practitioner:

<u>Date</u>	<u>Rx No.</u>	<u>Refills</u>	<u>Drug</u>	<u>Quantity</u>	<u>Doctor</u>
04/14/92	3209347	5	Fiorinal	30	Scholl
09/03/92	3214033	5	Fiorinal	30	Scholl
06/12/92	4211374	5	Halcion .25mg	30	Scholl
10/02/92	4214983	5	Halcion .25mg	30	Scholl
11/28/92	4216843	5	Restoril 30mg	60	Scholl
12/15/92	4217438	5	Tranxene 3.75mg	50	Thuney
08/20/92	5213590	5	Lomanate	40	Scholl

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

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- (3) Richard L. Jarvis did, on or about the following dates, knowingly sell a controlled substance in amounts less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Ohio Revised Code, to wit: Richard L. Jarvis gave the following controlled substances in the following amounts to his wife, Jane Jarvis, when there had been no legitimate prescriptions issued by practitioners:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Doctor</u>
04/14/92	3209347	Fiorinal	30	Scholl
06/10/92	3209347	Fiorinal	30	Scholl
07/08/92	3209347	Fiorinal	30	Scholl
07/31/92	3209347	Fiorinal	30	Scholl
08/19/92	3209347	Fiorinal	30	Scholl
09/03/92	3214033	Fiorinal	30	Scholl
12/15/92	4217438	Tranxene 3.75mg	50	Thuney
01/19/93	4217438	Tranxene 3.75mg	50	Thuney
08/20/92	5213590	Lomanate	40	Scholl
09/01/92	5213590	Lomanate	40	Scholl
09/08/92	5213590	Lomanate	40	Scholl
10/08/92	5213590	Lomanate	40	Scholl
11/19/92	5213590	Lomanate	40	Scholl
12/01/92	5213590	Lomanate	40	Scholl

Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.

- (4) Richard L. Jarvis did, on or about the following dates, knowingly sell a controlled substance in amounts 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: Richard L. Jarvis gave the following controlled substances in the following amounts to his wife, Jane Jarvis, when there had been no legitimate prescriptions issued by practitioners:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Doctor</u>
06/12/92	4211374	Halcion .25mg	30	Scholl
07/10/92	4211374	Halcion .25mg	30	Scholl
07/28/92	4211374	Halcion .25mg	30	Scholl
08/10/92	4211374	Halcion .25mg	30	Scholl
09/01/92	4211374	Halcion .25mg	30	Scholl
09/15/92	4211374	Halcion .25mg	30	Scholl
10/02/92	4214983	Halcion .25mg	30	Scholl
11/14/92	4214983	Halcion .25mg	30	Scholl
12/20/92	4214983	Halcion .25mg	30	Scholl
11/28/92	4216843	Restoril 30mg	60	Scholl
01/11/93	4216843	Restoril 30mg	60	Scholl
02/08/93	4216843	Restoril 30mg	60	Scholl
03/03/93	4216843	Restoril 30mg	60	Scholl
03/27/93	4216843	Restoril 30mg	60	Scholl

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

- (5) Richard L. Jarvis did, on or about the following dates, knowingly sell a controlled substance in amounts 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 Ohio Revised Code, to wit: Richard L. Jarvis sold the following controlled substances in the following amounts when there had been no legitimate prescriptions issued by practitioners, totaling 30,950 units of Vicodin ES, 19,750 units of Hydrocodone 5mg/APAP 500mg, 600 units of Percodan, and 450 Percocet (along with an undetermined amount of Soma, a dangerous drug) to the same individual in 1994:

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<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Doctor</u>
01/05/94	3231021	Hydrocodone	150	Brammer
01/05/94	3231022	Hydrocodone	150	Brammer
01/07/94	3231021	Hydrocodone	150	Brammer
01/07/94	3231022	Vicodin ES	150	Brammer
01/11/94	3231021	Hydrocodone	150	Brammer
01/11/94	3231022	Vicodin ES	150	Brammer
01/14/94	3231021	Hydrocodone	150	Brammer
01/14/94	3231022	Vicodin ES	150	Brammer
01/17/94	2231438	Percodan	150	Brammer
01/17/94	3231436	Hydrocodone	150	Brammer
01/22/94	3231022	Vicodin ES	150	Brammer
01/22/94	3231436	Hydrocodone	150	Brammer
01/25/94	3231436	Hydrocodone	150	Brammer
01/25/94	3231695	Vicodin ES	150	Brammer
01/28/94	3231436	Hydrocodone	150	Brammer
01/28/94	3231695	Vicodin ES	150	Brammer
01/31/94	3231695	Vicodin ES	150	Brammer
02/02/94	3231436	Hydrocodone	150	Brammer
02/02/94	3231695	Vicodin ES	150	Brammer
02/04/94	3231436	Hydrocodone	150	Brammer
02/04/94	3232078	Vicodin ES	150	Brammer
02/14/94	3232078	Vicodin ES	150	Brammer
02/14/94	3232370	Hydrocodone	150	Brammer
02/17/94	3232078	Vicodin ES	150	Brammer
02/19/94	3232078	Vicodin ES	150	Brammer
02/19/94	3232370	Hydrocodone	150	Brammer
02/22/94	3232078	Vicodin ES	150	Brammer
02/22/94	3232370	Hydrocodone	150	Brammer
02/24/94	3232078	Vicodin ES	150	Brammer
02/24/94	3232370	Hydrocodone	150	Brammer
02/26/94	3232937	Vicodin ES	150	Brammer
02/26/94	3232939	Hydrocodone	200	Brammer
03/01/94	3233927	Vicodin ES	150	Brammer
03/04/94	3232937	Vicodin ES	150	Brammer
03/04/94	3232939	Hydrocodone	200	Brammer
03/07/94	3232937	Vicodin ES	150	Brammer
03/10/94	3232937	Vicodin ES	150	Brammer
03/10/94	3232939	Hydrocodone	200	Brammer
03/12/94	3233523	Hydrocodone	200	Brammer
03/12/94	3233524	Vicodin ES	150	Brammer
03/15/94	3233524	Vicodin ES	150	Brammer
03/17/94	3233524	Vicodin ES	150	Brammer
03/18/94	3233523	Hydrocodone	200	Brammer
03/18/94	3233524	Vicodin ES	150	Brammer
03/21/94	3233523	Hydrocodone	200	Brammer
03/21/94	3233524	Vicodin ES	150	Brammer
03/24/94	3232937	Vicodin ES	150	Brammer
03/24/94	3233523	Hydrocodone	200	Brammer
03/26/94	3233524	Vicodin ES	150	Brammer
03/28/94	3233523	Hydrocodone	200	Brammer
03/28/94	3234090	Vicodin ES	150	Brammer
03/30/94	3234237	Vicodin ES	200	Brammer
03/30/94	3234238	Hydrocodone	200	Brammer
04/01/94	3234237	Vicodin ES	200	Brammer
04/01/94	3234238	Hydrocodone	200	Brammer
04/02/94	3234237	Vicodin ES	200	Brammer
04/12/94	3234237	Vicodin ES	200	Brammer
04/12/94	3234238	Hydrocodone	200	Brammer

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<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Doctor</u>
04/14/94	3234237	Vicodin ES	200	Brammer
04/14/94	3234238	Hydrocodone	200	Brammer
04/16/94	3234237	Vicodin ES	200	Brammer
04/16/94	3234238	Hydrocodone	200	Brammer
04/18/94	3234894	Vicodin ES	200	Brammer
04/18/94	3234895	Hydrocodone	200	Brammer
04/20/94	3234894	Vicodin ES	200	Brammer
04/22/94	3234894	Vicodin ES	200	Brammer
04/22/94	3234895	Hydrocodone	200	Brammer
04/25/94	3234894	Vicodin ES	200	Brammer
04/25/94	3234895	Hydrocodone	200	Brammer
04/27/94	3234894	Vicodin ES	200	Brammer
04/27/94	3234895	Hydrocodone	200	Brammer
04/29/94	3234894	Vicodin ES	200	Brammer
04/29/94	3234895	Hydrocodone	200	Brammer
05/02/94	3234895	Hydrocodone	200	Brammer
05/02/94	3235412	Vicodin ES	200	Brammer
05/05/94	3235554	Hydrocodone	200	Brammer
05/05/94	3235555	Vicodin ES	200	Brammer
05/07/94	3235554	Hydrocodone	200	Brammer
05/07/94	3235555	Vicodin ES	200	Brammer
05/09/94	3235554	Hydrocodone	200	Brammer
05/09/94	3235555	Vicodin ES	200	Brammer
05/11/94	3235554	Hydrocodone	200	Brammer
05/11/94	3235555	Vicodin ES	200	Brammer
05/13/94	3235555	Vicodin ES	200	Brammer
05/16/94	3235554	Hydrocodone	200	Brammer
05/16/94	3235555	Vicodin ES	200	Brammer
05/19/94	3236119	Hydrocodone	200	Brammer
05/19/94	3236120	Vicodin ES	250	Brammer
05/21/94	3236119	Hydrocodone	200	Brammer
05/21/94	3236120	Vicodin ES	250	Brammer
05/23/94	3236119	Hydrocodone	200	Brammer
05/23/94	3236120	Vicodin ES	250	Brammer
05/26/94	3236119	Hydrocodone	200	Brammer
05/26/94	3236120	Vicodin ES	250	Brammer
05/28/94	3236119	Hydrocodone	200	Brammer
05/28/94	3236120	Vicodin ES	250	Brammer
05/31/94	3236119	Hydrocodone	200	Brammer
05/31/94	3236120	Vicodin ES	250	Brammer
06/03/94	3236746	Vicodin ES	250	Brammer
06/03/94	3236748	Hydrocodone	200	Brammer
06/06/94	3236746	Vicodin ES	250	Brammer
06/06/94	3236748	Hydrocodone	200	Brammer
06/08/94	2326746	Vicodin ES	250	Brammer
06/10/94	2326748	Hydrocodone	200	Brammer
06/10/94	3236746	Vicodin ES	250	Brammer
06/13/94	3236746	Vicodin ES	250	Brammer
06/13/94	3236748	Hydrocodone	200	Brammer
06/16/94	3236746	Vicodin ES	250	Brammer
06/16/94	3236748	Hydrocodone	200	Brammer
06/18/94	3236748	Hydrocodone	200	Brammer
06/18/94	3237293	Vicodin ES	250	Brammer
06/20/94	3237331	Hydrocodone	200	Brammer
06/20/94	3237332	Vicodin ES	250	Brammer
06/22/94	3237331	Hydrocodone	200	Brammer
06/22/94	3237332	Vicodin ES	250	Brammer

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<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Doctor</u>
06/27/94	3237331	Hydrocodone	200	Brammer
06/27/94	3237332	Vicodin ES	250	Brammer
06/30/94	3237331	Hydrocodone	200	Brammer
06/30/94	3237332	Vicodin ES	250	Brammer
07/02/94	3237331	Hydrocodone	200	Brammer
07/02/94	3237332	Vicodin ES	250	Brammer
07/05/94	2237855	Percodan	200	Brammer
07/05/94	3237331	Hydrocodone	200	Brammer
07/05/94	3237852	Vicodin ES	250	Brammer
07/07/94	3237852	Vicodin ES	250	Brammer
07/07/94	3237940	Hydrocodone	200	Brammer
07/09/94	3237852	Vicodin ES	250	Brammer
07/11/94	3237852	Vicodin ES	250	Brammer
07/11/94	3237940	Hydrocodone	200	Brammer
07/13/94	3237852	Vicodin ES	250	Brammer
07/15/94	3237852	Vicodin ES	250	Brammer
07/15/94	3237940	Hydrocodone	200	Brammer
07/18/94	3238285	Vicodin ES	300	Brammer
07/18/94	3238286	Hydrocodone	150	Brammer
07/20/94	3238285	Vicodin ES	300	Brammer
07/20/94	3238286	Hydrocodone	150	Brammer
07/22/94	3238285	Vicodin ES	300	Brammer
07/22/94	3238286	Hydrocodone	150	Brammer
07/25/94	3238285	Vicodin ES	300	Brammer
07/25/94	3238286	Hydrocodone	150	Brammer
07/27/94	3238285	Vicodin ES	300	Brammer
07/27/94	3238286	Hydrocodone	150	Brammer
07/29/94	3238285	Vicodin ES	300	Brammer
07/29/94	3238286	Hydrocodone	150	Brammer
08/01/94	3238789	Vicodin ES	300	Brammer
08/01/94	3238790	Hydrocodone	150	Brammer
08/03/94	3238789	Vicodin ES	300	Brammer
08/03/94	3238790	Hydrocodone	150	Brammer
08/04/94	2238945	Percocet	200	Brammer
08/05/94	3238789	Vicodin ES	300	Brammer
08/05/94	3238790	Hydrocodone	150	Brammer
08/08/94	3238789	Vicodin ES	300	Brammer
08/08/94	3238790	Hydrocodone	150	Brammer
08/11/94	3238789	Vicodin ES	300	Brammer
08/11/94	3238790	Hydrocodone	150	Brammer
08/13/94	3238789	Vicodin ES	300	Brammer
08/15/94	3238790	Hydrocodone	150	Brammer
08/15/94	3239281	Vicodin ES	300	Brammer
08/17/94	3239281	Vicodin ES	300	Brammer
08/17/94	3239413	Hydrocodone	150	Brammer
08/19/94	3239281	Vicodin ES	300	Brammer
08/19/94	3239413	Hydrocodone	150	Brammer
08/22/94	3239281	Vicodin ES	300	Brammer
08/22/94	3239413	Hydrocodone	150	Brammer
08/24/94	3239281	Vicodin ES	300	Brammer
08/24/94	3239413	Hydrocodone	150	Brammer
08/26/94	3239281	Vicodin ES	300	Brammer
08/26/94	3239413	Hydrocodone	150	Brammer
08/29/94	3239413	Hydrocodone	150	Brammer
08/29/94	3239915	Vicodin ES	300	Brammer
08/31/94	3239915	Vicodin ES	300	Brammer
08/31/94	3240025	Hydrocodone	150	Gilliotte

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<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Doctor</u>
09/02/94	3239915	Vicodin ES	300	Brammer
09/02/94	3240025	Hydrocodone	150	Gilliotte
09/06/94	3239915	Vicodin ES	300	Brammer
09/06/94	3240025	Hydrocodone	150	Gilliotte
09/08/94	3239915	Vicodin ES	300	Brammer
09/08/94	3240025	Hydrocodone	150	Gilliotte
09/10/94	3239915	Vicodin ES	300	Brammer
09/10/94	3240025	Hydrocodone	150	Gilliotte
09/12/94	3240417	Hydrocodone	100	Brammer
09/12/94	3240418	Vicodin ES	300	Brammer
09/14/94	3240025	Hydrocodone	150	Gilliotte
09/14/94	3240418	Vicodin ES	300	Brammer
09/16/94	3240642	Vicodin ES	300	Brammer
09/16/94	3240643	Hydrocodone	150	Gilliotte
09/19/94	3240642	Vicodin ES	300	Brammer
09/19/94	3240643	Hydrocodone	150	Gilliotte
09/21/94	3240642	Vicodin ES	300	Brammer
09/21/94	3240643	Hydrocodone	150	Gilliotte
09/23/94	3240642	Vicodin ES	300	Brammer
09/23/94	3240643	Hydrocodone	150	Gilliotte
09/26/94	3240642	Vicodin ES	300	Brammer
09/26/94	3240643	Hydrocodone	150	Gilliotte
09/28/94	3240642	Vicodin ES	300	Brammer
09/28/94	3240643	Hydrocodone	150	Gilliotte
09/30/94	2241215	Percodan	250	Brammer
09/30/94	3241214	Vicodin ES	300	Brammer
10/03/94	3241214	Vicodin ES	300	Brammer
10/03/94	3241284	Hydrocodone	150	Gilliotte
10/05/94	3241214	Vicodin ES	300	Brammer
10/05/94	3241284	Hydrocodone	150	Gilliotte
10/07/94	3241214	Vicodin ES	300	Brammer
10/07/94	3241284	Hydrocodone	150	Gilliotte
10/10/94	3241214	Vicodin ES	300	Brammer
10/10/94	3241284	Hydrocodone	150	Gilliotte
10/11/94	2341761	Vicodin ES	300	Brammer
10/11/94	3241852	Hydrocodone	150	Gilliotte
10/12/94	3241214	Vicodin ES	300	Brammer
10/12/94	3241284	Hydrocodone	150	Gilliotte
10/14/94	3241284	Hydrocodone	150	Gilliotte
10/14/94	3241761	Vicodin ES	300	Brammer
10/17/94	3241761	Vicodin ES	300	Brammer
10/17/94	3241852	Hydrocodone	150	Gilliotte
10/19/94	3241761	Vicodin ES	300	Brammer
10/19/94	3241852	Hydrocodone	150	Gilliotte
10/24/94	3241761	Vicodin ES	300	Brammer
10/24/94	3241852	Hydrocodone	150	Gilliotte
10/26/94	2242255	Percocet	250	Brammer
10/26/94	3241761	Vicodin ES	300	Brammer
10/31/94	3241852	Hydrocodone	150	Gilliotte
10/31/94	3242380	Vicodin ES	300	Brammer
11/02/94	3241852	Hydrocodone	150	Gilliotte
11/02/94	3242380	Vicodin ES	300	Brammer
11/04/94	3242380	Vicodin ES	300	Brammer
11/04/94	3242610	Hydrocodone	150	Gilliotte
11/07/94	3242380	Vicodin ES	300	Brammer
11/07/94	3242610	Hydrocodone	150	Gilliotte
11/09/94	3242380	Vicodin ES	300	Brammer
11/09/94	3242610	Hydrocodone	150	Gilliotte

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<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Doctor</u>
11/11/94	3242380	Vicodin ES	300	Brammer
11/11/94	3242610	Hydrocodone	150	Gilliotte
11/14/94	3242610	Hydrocodone	150	Gilliotte
11/14/94	3242976	Vicodin ES	300	Brammer
11/18/94	3242610	Hydrocodone	150	Gilliotte
11/18/94	3242976	Vicodin ES	300	Brammer
11/21/94	3242976	Vicodin ES	300	Brammer
11/21/94	3243259	Hydrocodone	150	Gilliotte
11/23/94	3242976	Vicodin ES	300	Brammer
11/23/94	3243259	Hydrocodone	150	Gilliotte
11/25/94	3242976	Vicodin ES	300	Brammer
11/25/94	3243259	Hydrocodone	150	Gilliotte
11/28/94	3242976	Vicodin ES	300	Brammer
11/28/94	3243259	Hydrocodone	150	Gilliotte
12/03/94	3243773	Hydrocodone	200	Brammer
12/03/94	3243774	Vicodin ES	300	Brammer
12/07/94	3243773	Hydrocodone	200	Brammer
12/12/94	3243773	Hydrocodone	200	Brammer

Notwithstanding Walter Johnson's affidavits, the voluminous evidence regarding the prescriptions themselves (i.e., number and quantity) indicates that they were not dispensed for a legitimate or bona fide medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (6) Richard L. Jarvis did, on or about the following dates, intentionally make and/or knowingly possess false or forged prescriptions, to wit: Richard L. Jarvis forged the following prescriptions to cover for the controlled substances he was selling without prescriptions from a practitioner:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Doctor</u>
01/05/94	3231021	Hydrocodone	150	Brammer
01/05/94	3231022	Hydrocodone	150	Brammer
01/07/94	3231021	Hydrocodone	150	Brammer
01/07/94	3231022	Vicodin ES	150	Brammer
01/11/94	3231021	Hydrocodone	150	Brammer
01/11/94	3231022	Vicodin ES	150	Brammer
01/14/94	3231021	Hydrocodone	150	Brammer
01/14/94	3231022	Vicodin ES	150	Brammer
01/17/94	2231438	Percodan	150	Brammer
01/17/94	3231436	Hydrocodone	150	Brammer
01/22/94	3231022	Vicodin ES	150	Brammer
01/22/94	3231436	Hydrocodone	150	Brammer
01/25/94	3231436	Hydrocodone	150	Brammer
01/25/94	3231695	Vicodin ES	150	Brammer
01/28/94	3231436	Hydrocodone	150	Brammer
01/28/94	3231695	Vicodin ES	150	Brammer
01/31/94	3231695	Vicodin ES	150	Brammer
02/02/94	3231436	Hydrocodone	150	Brammer
02/02/94	3231695	Vicodin ES	150	Brammer
02/04/94	3231436	Hydrocodone	150	Brammer
02/04/94	3232078	Vicodin ES	150	Brammer
02/14/94	3232078	Vicodin ES	150	Brammer
02/14/94	3232370	Hydrocodone	150	Brammer
02/17/94	3232078	Vicodin ES	150	Brammer
02/19/94	3232078	Vicodin ES	150	Brammer
02/19/94	3232370	Hydrocodone	150	Brammer
02/22/94	3232078	Vicodin ES	150	Brammer
02/22/94	3232370	Hydrocodone	150	Brammer

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<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Doctor</u>
02/24/94	3232078	Vicodin ES	150	Brammer
02/24/94	3232370	Hydrocodone	150	Brammer
02/26/94	3232937	Vicodin ES	150	Brammer
02/26/94	3232939	Hydrocodone	200	Brammer
03/01/94	3233927	Vicodin ES	150	Brammer
03/04/94	3232937	Vicodin ES	150	Brammer
03/04/94	3232939	Hydrocodone	200	Brammer
03/07/94	3232937	Vicodin ES	150	Brammer
03/10/94	3232937	Vicodin ES	150	Brammer
03/10/94	3232939	Hydrocodone	200	Brammer
03/12/94	3233523	Hydrocodone	200	Brammer
03/12/94	3233524	Vicodin ES	150	Brammer
03/15/94	3233524	Vicodin ES	150	Brammer
03/17/94	3233524	Vicodin ES	150	Brammer
03/18/94	3233523	Hydrocodone	200	Brammer
03/18/94	3233524	Vicodin ES	150	Brammer
03/21/94	3233523	Hydrocodone	200	Brammer
03/21/94	3233524	Vicodin ES	150	Brammer
03/24/94	3232937	Vicodin ES	150	Brammer
03/24/94	3233523	Hydrocodone	200	Brammer
03/26/94	3233524	Vicodin ES	150	Brammer
03/28/94	3233523	Hydrocodone	200	Brammer
03/28/94	3234090	Vicodin ES	150	Brammer
03/30/94	3234237	Vicodin ES	200	Brammer
03/30/94	3234238	Hydrocodone	200	Brammer
04/01/94	3234237	Vicodin ES	200	Brammer
04/01/94	3234238	Hydrocodone	200	Brammer
04/02/94	3234237	Vicodin ES	200	Brammer
04/12/94	3234237	Vicodin ES	200	Brammer
04/12/94	3234238	Hydrocodone	200	Brammer
04/14/94	3234237	Vicodin ES	200	Brammer
04/14/94	3234238	Hydrocodone	200	Brammer
04/16/94	3234237	Vicodin ES	200	Brammer
04/16/94	3234238	Hydrocodone	200	Brammer
04/18/94	3234894	Vicodin ES	200	Brammer
04/18/94	3234895	Hydrocodone	200	Brammer
04/20/94	3234894	Vicodin ES	200	Brammer
04/22/94	3234894	Vicodin ES	200	Brammer
04/22/94	3234895	Hydrocodone	200	Brammer
04/25/94	3234894	Vicodin ES	200	Brammer
04/25/94	3234895	Hydrocodone	200	Brammer
04/27/94	3234894	Vicodin ES	200	Brammer
04/27/94	3234895	Hydrocodone	200	Brammer
04/29/94	3234894	Vicodin ES	200	Brammer
04/29/94	3234895	Hydrocodone	200	Brammer
05/02/94	3234895	Hydrocodone	200	Brammer
05/02/94	3235412	Vicodin ES	200	Brammer
05/05/94	3235554	Hydrocodone	200	Brammer
05/05/94	3235555	Vicodin ES	200	Brammer
05/07/94	3235554	Hydrocodone	200	Brammer
05/07/94	3235555	Vicodin ES	200	Brammer
05/09/94	3235554	Hydrocodone	200	Brammer
05/09/94	3235555	Vicodin ES	200	Brammer
05/11/94	3235554	Hydrocodone	200	Brammer
05/11/94	3235555	Vicodin ES	200	Brammer
05/13/94	3235555	Vicodin ES	200	Brammer
05/16/94	3235554	Hydrocodone	200	Brammer
05/16/94	3235555	Vicodin ES	200	Brammer

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<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Doctor</u>
05/19/94	3236119	Hydrocodone	200	Brammer
05/19/94	3236120	Vicodin ES	250	Brammer
05/21/94	3236119	Hydrocodone	200	Brammer
05/21/94	3236120	Vicodin ES	250	Brammer
05/23/94	3236119	Hydrocodone	200	Brammer
05/23/94	3236120	Vicodin ES	250	Brammer
05/26/94	3236119	Hydrocodone	200	Brammer
05/26/94	3236120	Vicodin ES	250	Brammer
05/28/94	3236119	Hydrocodone	200	Brammer
05/28/94	3236120	Vicodin ES	250	Brammer
05/31/94	3236119	Hydrocodone	200	Brammer
05/31/94	3236120	Vicodin ES	250	Brammer
06/03/94	3236746	Vicodin ES	250	Brammer
06/03/94	3236748	Hydrocodone	200	Brammer
06/06/94	3236746	Vicodin ES	250	Brammer
06/06/94	3236748	Hydrocodone	200	Brammer
06/08/94	2326746	Vicodin ES	250	Brammer
06/10/94	2326748	Hydrocodone	200	Brammer
06/10/94	3236746	Vicodin ES	250	Brammer
06/13/94	3236746	Vicodin ES	250	Brammer
06/13/94	3236748	Hydrocodone	200	Brammer
06/16/94	3236746	Vicodin ES	250	Brammer
06/16/94	3236748	Hydrocodone	200	Brammer
06/18/94	3236748	Hydrocodone	200	Brammer
06/18/94	3237293	Vicodin ES	250	Brammer
06/20/94	3237331	Hydrocodone	200	Brammer
06/20/94	3237332	Vicodin ES	250	Brammer
06/22/94	3237331	Hydrocodone	200	Brammer
06/22/94	3237332	Vicodin ES	250	Brammer
06/27/94	3237331	Hydrocodone	200	Brammer
06/27/94	3237332	Vicodin ES	250	Brammer
06/30/94	3237331	Hydrocodone	200	Brammer
06/30/94	3237332	Vicodin ES	250	Brammer
07/02/94	3237331	Hydrocodone	200	Brammer
07/02/94	3237332	Vicodin ES	250	Brammer
07/05/94	2237855	Percodan	200	Brammer
07/05/94	3237331	Hydrocodone	200	Brammer
07/05/94	3237852	Vicodin ES	250	Brammer
07/07/94	3237852	Vicodin ES	250	Brammer
07/07/94	3237940	Hydrocodone	200	Brammer
07/09/94	3237852	Vicodin ES	250	Brammer
07/11/94	3237852	Vicodin ES	250	Brammer
07/11/94	3237940	Hydrocodone	200	Brammer
07/13/94	3237852	Vicodin ES	250	Brammer
07/15/94	3237852	Vicodin ES	250	Brammer
07/15/94	3237940	Hydrocodone	200	Brammer
07/18/94	3238285	Vicodin ES	300	Brammer
07/18/94	3238286	Hydrocodone	150	Brammer
07/20/94	3238285	Vicodin ES	300	Brammer
07/20/94	3238286	Hydrocodone	150	Brammer
07/22/94	3238285	Vicodin ES	300	Brammer
07/22/94	3238286	Hydrocodone	150	Brammer
07/25/94	3238285	Vicodin ES	300	Brammer
07/25/94	3238286	Hydrocodone	150	Brammer
07/27/94	3238285	Vicodin ES	300	Brammer
07/27/94	3238286	Hydrocodone	150	Brammer
07/29/94	3238285	Vicodin ES	300	Brammer
07/29/94	3238286	Hydrocodone	150	Brammer

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<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Doctor</u>
08/01/94	3238789	Vicodin ES	300	Brammer
08/01/94	3238790	Hydrocodone	150	Brammer
08/03/94	3238789	Vicodin ES	300	Brammer
08/03/94	3238790	Hydrocodone	150	Brammer
08/04/94	2238945	Percocet	200	Brammer
08/05/94	3238789	Vicodin ES	300	Brammer
08/05/94	3238790	Hydrocodone	150	Brammer
08/08/94	3238789	Vicodin ES	300	Brammer
08/08/94	3238790	Hydrocodone	150	Brammer
08/11/94	3238789	Vicodin ES	300	Brammer
08/11/94	3238790	Hydrocodone	150	Brammer
08/13/94	3238789	Vicodin ES	300	Brammer
08/15/94	3238790	Hydrocodone	150	Brammer
08/15/94	3239281	Vicodin ES	300	Brammer
08/17/94	3239281	Vicodin ES	300	Brammer
08/17/94	3239413	Hydrocodone	150	Brammer
08/19/94	3239281	Vicodin ES	300	Brammer
08/19/94	3239413	Hydrocodone	150	Brammer
08/22/94	3239281	Vicodin ES	300	Brammer
08/22/94	3239413	Hydrocodone	150	Brammer
08/24/94	3239281	Vicodin ES	300	Brammer
08/24/94	3239413	Hydrocodone	150	Brammer
08/26/94	3239281	Vicodin ES	300	Brammer
08/26/94	3239413	Hydrocodone	150	Brammer
08/29/94	3239413	Hydrocodone	150	Brammer
08/29/94	3239915	Vicodin ES	300	Brammer
08/31/94	3239915	Vicodin ES	300	Brammer
08/31/94	3240025	Hydrocodone	150	Gilliotte
09/02/94	3239915	Vicodin ES	300	Brammer
09/02/94	3240025	Hydrocodone	150	Gilliotte
09/06/94	3239915	Vicodin ES	300	Brammer
09/06/94	3240025	Hydrocodone	150	Gilliotte
09/08/94	3239915	Vicodin ES	300	Brammer
09/08/94	3240025	Hydrocodone	150	Gilliotte
09/10/94	3239915	Vicodin ES	300	Brammer
09/10/94	3240025	Hydrocodone	150	Gilliotte
09/12/94	3240417	Hydrocodone	100	Brammer
09/12/94	3240418	Vicodin ES	300	Brammer
09/14/94	3240025	Hydrocodone	150	Gilliotte
09/14/94	3240418	Vicodin ES	300	Brammer
09/16/94	3240642	Vicodin ES	300	Brammer
09/16/94	3240643	Hydrocodone	150	Gilliotte
09/19/94	3240642	Vicodin ES	300	Brammer
09/19/94	3240643	Hydrocodone	150	Gilliotte
09/21/94	3240642	Vicodin ES	300	Brammer
09/21/94	3240643	Hydrocodone	150	Gilliotte
09/23/94	3240642	Vicodin ES	300	Brammer
09/23/94	3240643	Hydrocodone	150	Gilliotte
09/26/94	3240642	Vicodin ES	300	Brammer
09/26/94	3240643	Hydrocodone	150	Gilliotte
09/28/94	3240642	Vicodin ES	300	Brammer
09/28/94	3240643	Hydrocodone	150	Gilliotte
09/30/94	2241215	Percodan	250	Brammer
09/30/94	3241214	Vicodin ES	300	Brammer
10/03/94	3241214	Vicodin ES	300	Brammer
10/03/94	3241284	Hydrocodone	150	Gilliotte
10/05/94	3241214	Vicodin ES	300	Brammer
10/05/94	3241284	Hydrocodone	150	Gilliotte

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<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Doctor</u>
10/07/94	3241214	Vicodin ES	300	Brammer
10/07/94	3241284	Hydrocodone	150	Gilliotte
10/10/94	3241214	Vicodin ES	300	Brammer
10/10/94	3241284	Hydrocodone	150	Gilliotte
10/11/94	2341761	Vicodin ES	300	Brammer
10/11/94	3241852	Hydrocodone	150	Gilliotte
10/12/94	3241214	Vicodin ES	300	Brammer
10/12/94	3241284	Hydrocodone	150	Gilliotte
10/14/94	3241284	Hydrocodone	150	Gilliotte
10/14/94	3241761	Vicodin ES	300	Brammer
10/17/94	3241761	Vicodin ES	300	Brammer
10/17/94	3241852	Hydrocodone	150	Gilliotte
10/19/94	3241761	Vicodin ES	300	Brammer
10/19/94	3241852	Hydrocodone	150	Gilliotte
10/24/94	3241761	Vicodin ES	300	Brammer
10/24/94	3241852	Hydrocodone	150	Gilliotte
10/26/94	2242255	Percocet	250	Brammer
10/26/94	3241761	Vicodin ES	300	Brammer
10/31/94	3241852	Hydrocodone	150	Gilliotte
10/31/94	3242380	Vicodin ES	300	Brammer
11/02/94	3241852	Hydrocodone	150	Gilliotte
11/02/94	3242380	Vicodin ES	300	Brammer
11/04/94	3242380	Vicodin ES	300	Brammer
11/04/94	3242610	Hydrocodone	150	Gilliotte
11/07/94	3242380	Vicodin ES	300	Brammer
11/07/94	3242610	Hydrocodone	150	Gilliotte
11/09/94	3242380	Vicodin ES	300	Brammer
11/09/94	3242610	Hydrocodone	150	Gilliotte
11/11/94	3242380	Vicodin ES	300	Brammer
11/11/94	3242610	Hydrocodone	150	Gilliotte
11/14/94	3242610	Hydrocodone	150	Gilliotte
11/14/94	3242976	Vicodin ES	300	Brammer
11/18/94	3242610	Hydrocodone	150	Gilliotte
11/18/94	3242976	Vicodin ES	300	Brammer
11/21/94	3242976	Vicodin ES	300	Brammer
11/21/94	3243259	Hydrocodone	150	Gilliotte
11/23/94	3242976	Vicodin ES	300	Brammer
11/23/94	3243259	Hydrocodone	150	Gilliotte
11/25/94	3242976	Vicodin ES	300	Brammer
11/25/94	3243259	Hydrocodone	150	Gilliotte
11/28/94	3242976	Vicodin ES	300	Brammer
11/28/94	3243259	Hydrocodone	150	Gilliotte
12/03/94	3243773	Hydrocodone	200	Brammer
12/03/94	3243774	Vicodin ES	300	Brammer
12/07/94	3243773	Hydrocodone	200	Brammer
12/12/94	3243773	Hydrocodone	200	Brammer

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

- (7) Richard L. Jarvis did, on or about November 28, 1994, knowingly make and/or affix false or forged labels to packages or receptacles containing dangerous drugs when the conduct was not in accordance with Chapters 3719. and 4729. of the Ohio Revised Code, to wit: without legitimate prescriptions or authorization from the practitioners, Richard L. Jarvis created false labels and placed them on prescription vials and sold 300 Soma tablets in two vials, 300 Vicodin ES tablets in two vials, and 300 Vicodin tablets in two vials. Such conduct is in violation of Section 2925.23(D) of the Ohio Revised Code.

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- (8) Richard L. Jarvis did, on or about the following dates, make false or forged prescriptions for dangerous drugs, to wit: Richard L. Jarvis created the following prescriptions for Soma, a dangerous drug, without authorization from a practitioner:

<u>Date</u>	<u>Rx No.</u>	<u>Quantity</u>	<u>Doctor</u>
08/05/94	6238971	300	Brammer
09/19/94	6240641	300	Brammer
11/28/94	6243436	300	Brammer

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

- (9) Richard L. Jarvis did, on or about December 10, 1994, knowing that an official investigation was in progress or likely to be instituted, alter, destroy, conceal or remove computer records with purpose to impair their value or availability as evidence in such proceeding, to wit: Richard L. Jarvis purged computer records of patient profiles and/or drugs dispensed fearing that he would be caught for trafficking in drugs and/or illegal processing of drug documents. Such conduct is in violation of Section 2921.12 of the Ohio Revised Code.

- (9) Richard L. Jarvis did, on or about the following dates, make a false or forged prescription for a dangerous drug, to wit: Richard L. Jarvis created the following prescriptions for glaucoma medication when not authorized by the physician indicated thereon:

<u>Rx No.</u>	<u>Date</u>	<u>Refills Dispensed</u>
6185158	05/01/90	at least 1
6185159	05/01/90	at least 3
6198766	06/10/91	0
6198767	06/10/91	0
6200105	07/22/91	5
6200106	07/22/91	0
6201523	09/04/91	6
6201524	09/04/91	8
6212608	07/22/92	5
6214201	09/10/92	4
6214202	09/10/92	4
6226328	08/18/93	3
6226329	08/18/93	5
6226330	08/18/93	3
6241281	10/03/94	1
6241282	10/03/94	1
6241283	10/03/94	1

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

- (11) Richard L. Jarvis did, on or about the following dates, sell at retail dangerous drugs when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Richard L. Jarvis sold the following glaucoma medications without a prescription from a practitioner:

<u>Rx No.</u>	<u>Date</u>	<u>Refills Dispensed</u>
6185158	05/01/90	at least 1
6185159	05/01/90	at least 3
6198766	06/10/91	0
6198767	06/10/91	0
6200105	07/22/91	5
6200106	07/22/91	0
6201523	09/04/91	6
6201524	09/04/91	8

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<u>Rx No.</u>	<u>Date</u>	<u>Refills Dispensed</u>
6212608	07/22/92	5
6214201	09/10/92	4
6214202	09/10/92	4
6226328	08/18/93	3
6226329	08/18/93	5
6226330	08/18/93	3
6241281	10/03/94	1
6241282	10/03/94	1
6241283	10/03/94	1

Such conduct is in violation of Section 4729.51(C)(1) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (11) 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 (2) and (11) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued December 23, 1994.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Richard L. Jarvis:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-1-11135, held by Richard L. Jarvis effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-1-11135, held by Richard L. Jarvis effective as of the date of the mailing of this Order.

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

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

MOTION CARRIED.

SO ORDERED.

Mr. Repke seconded the motion and it was approved (Aye-7/Nay-0).

RES. 96-154 Mrs. Plant moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-950613-066)

In The Matter Of:

KEVIN M. RILEY, R.Ph.
2550 Augusta Blvd., #103
Fairfield, Ohio 45014
(R.Ph. No. 03-3-18795)

INTRODUCTION

THE MATTER OF KEVIN M. RILEY CAME ON FOR CONSIDERATION ON JANUARY 25, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

KEVIN M. RILEY WAS NOT PRESENT NOR WAS HE REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

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

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity letter dated June 13, 1995.
- (2) Exhibit 1A--Pharmacist File Front Sheet of Kevin M. Riley showing original date of registration as April 23, 1991.
- (3) Exhibit 1B--Renewal Application for Pharmacist License, No. 03-3-18795, for a license to practice pharmacy in Ohio from September 15, 1994, to September 15, 1995, of Kevin M. Riley dated August 11, 1994.
- (4) Exhibit 2--Copy of four Thriftway #63 Pharmacist's Statements dated January 30, 1995; and copy of two Thriftway #77 Pharmacist's Statements dated February 3, 1995.
- (5) Exhibit 3--Copy of Thriftway Offense Report, Case No. 95-666-E, regarding Kevin M. Riley dated February 1, 1995; and two-page Investigative Report of J. W. Osborne dated January 31, 1995.
- (6) Exhibit 4--Report of Specialist George Rudemiller regarding Kevin Riley, not dated.
- (7) Exhibit 5--Copy of statement of Kevin M. Riley dated February 3, 1995.
- (8) Exhibit 6--Copy of letter from John W. Osborne dated February 10, 1995.
- (9) Exhibit 7--Certified Written Plea of Guilty in the Clermont County Common Pleas Court, Case No. 95-CR-005064, of Kevin M. Riley dated April 19, 1995.

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Respondent's Exhibits:

- (1) None

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) On June 13, 1995, Kevin M. Riley was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing.
- (2) As demonstrated by personal delivery receipt of July 27, 1995, Kevin M. Riley received the letter of June 13, 1995, informing him of the allegations against him, and his rights.
- (3) Kevin M. Riley has not responded in any manner to the letter of June 13, 1995, and has not requested a hearing in this matter.
- (4) Kevin M. Riley was originally licensed to practice pharmacy in the state of Ohio on April 23, 1991, pursuant to reciprocity; and, on June 13, 1995, Kevin M. Riley's license was suspended in accordance with Section 3719.121(C) of the Ohio Revised Code.
- (5) On April 19, 1995, Kevin M. Riley pled guilty in the Common Pleas Court of Clermont County, Ohio, to three felony drug abuse offenses under Section 2925.22 of the Ohio Revised Code.
- (6) Kevin M. Riley did, on or about the following dates, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Thriftway Food and Drug (store number as indicated), beyond the express or implied consent of Thriftway:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Thriftway Store</u>
322701	08/19/94	Amoxicillin 250mg capsules	Store #77
322701	08/30/94	Amoxicillin 250mg capsules	Store #77
324279	09/19/94	Amoxicillin 250mg chewable tablets	Store #77
324979	09/30/94	Amoxicillin 250mg chewable tablets	Store #77
324910	09/30/94	Cephalexin 250mg capsules	Store #77
325856	10/18/94	Erythromycin 400mg/5ml	Store #77
326336	10/25/94	Amoxicillin 250mg/5ml suspension	Store #77
326334	10/25/94	Antibiotic Ear suspension	Store #77
29475?	11/19/94	Cephalexin 250mg capsules	Store #63
294??8	11/19/94	Amoxicillin 250mg/5ml suspension	Store #63
29571?	12/03/94	Doxycycline 100mg tablets	Store #63
296???	12/16/94	Amoxil 250mg chewable tablets	Store #63
296??5	12/18/94	Sulfamethoxazole w/TMP suspension	Store #63
297??6	01/04/95	AK-Spore Eye Ointment AKO	Store #63
29807?	01/07/95	Amoxicillin 500mg	Store #63
298??6	01/07/95	Amoxicillin 125mg/5ml suspension	Store #63
29771?	01/02/95	Nicorette 2mg Chewing Gum	Store #63
298??6	01/29/95	Amoxil 125mg/5ml suspension	Store #63

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

- (7) Kevin M. Riley did, on various dates from on or about August 1994, through January 1995, with the purpose to deprive, knowingly obtain or exert control over the property of the insurer of Thriftway Food and Drug by deception, to wit: Kevin M. Riley billed unauthorized prescriptions in the amount of \$97.10, and after demand by Thriftway Loss Prevention Department, Mr. Riley has failed to make reimbursement. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitutes being guilty of a felony as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (5) through (7) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued June 13, 1995.

Pursuant to Section 4729.16 of the Ohio Revised Code, and on the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-3-18795, held by Kevin M. Riley effective as of the date of the mailing of this Order. Further, Kevin M. Riley must petition the Board for reinstatement to determine whether or not his license will be reinstated and if so, any conditions the Board may set.

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 certificate of registration to the offices of the state board of pharmacy within ten days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

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

MOTION CARRIED.

SO ORDERED.

Mrs. Neuber seconded the motion and it was approved (Aye-7/Nay-0).

5:00 p.m. The Board recessed until 8:00 a.m., Friday, January 26, 1996.

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FRIDAY, JANUARY 26, 1996

8:10 a.m. ROLL CALL

The State Board of Pharmacy reconvened in Room 1919, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Paul F. Lamping, R.Ph. (President); Suzanne L. Neuber, R.Ph. (Vice-President); Robert Cavendish, R.Ph.; Wayne Miller, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

The Board was joined by Mary Jo Hunst, Associate Executive Director of the National Association of Boards of Pharmacy, and Geri Kale-Smith, FDLE Program Director, for the purpose of presenting information regarding the FDLE program and answering Board member questions regarding NABP's examination programs.

8:21 a.m. Board member Amonte Littlejohn, R.Ph. arrived and joined the meeting.

9:40 a.m. Board members Joseph Maslak, R.Ph. and John Hanna, R.Ph. arrived and joined the meeting.

11:05 a.m. The FDLE presentation was concluded and NABP staff left to return to Chicago.

Board staff presented a draft of the Richard Sweet Order for consideration by the Board. The Board directed that the Order be issued.

RES. 96-155 Assistant Attorney General Mary Hollern presented a draft of a letter that would be forwarded to the attorneys for Baxter International, Inc. The purpose of the letter is to address concerns posed by the attorneys in the matters of Baxter Healthcare Corporation (Docket No.'s D-950502-051; D-950502-053; D-950502-056). Mrs. Plant moved that the draft letter be approved and issued as follows:

James T. O'Neill, Esq.
Baxter International, Inc.
Law Department
One Baxter Parkway
Deerfield, Illinois 60015

Re: Orders of the State Board of Pharmacy
Docket Nos. D-950502-050, D-950502-051 and D-950502-053

Dear Mr. O'Neill:

I have been asked by the Assistant Attorney General to provide you with an explanation or clarification of the Orders issued in the following matters:

In the Matter of Baxter Healthcare Corporation, 5532 Spellmire Drive, Cincinnati, Ohio 44246 (Docket No. D-950502-056) (Wholesale Distributor No. 01-026050);

In the Matter of Baxter Healthcare Corporation, 5260 Naiman Parkway, Solon, Ohio 44139 (Docket No. D-950502-051) (Wholesale Distributor No. 01-010900);

In the Matter of Baxter Healthcare Corporation, 2320 McGaw Road, Obetz, Ohio 43207 (Docket No. D-950502-053) (Wholesale Distributor No. 01-349000).

I am authorized by the Ohio State Board of Pharmacy to explain certain issues about which Baxter Healthcare Corporation has expressed concern and which were addressed in the Orders. Specifically, Baxter Healthcare Corporation has inquired as to:

- (1) the effect of the probation established by the Ohio State Board of Pharmacy in the Orders;
- (2) whether Baxter Healthcare Corporation may petition the Ohio State Board of Pharmacy to have the probationary period established in the Orders shortened or removed entirely from the licenses affected; and
- (3) whether the requirement set forth in the Orders that Baxter Healthcare Corporation must not violate the drug laws of "any other state" is intended to expand the grounds upon which Baxter Healthcare Corporation could be held subject to action by the Ohio State Board of Pharmacy beyond those already provided for by the statutes, regulations and/or administrative code of Ohio.

The following is an explanation of these issues.

As referenced in the Board's Orders of August 4, 1995, probation is the period of time during which the Ohio State Board of Pharmacy will monitor the three facilities previously mentioned. This probation has the effect of a formal reprimand, as well as a suspension of the authority to train pharmacy interns. Probation does not affect Baxter Healthcare's due process rights. Specifically, if Baxter Healthcare Corporation is charged with any additional violations during the probationary period or thereafter, it retains its full right to notice of the charges, its right to a hearing, as well as any rights provided by the statutes, regulations and administrative codes of Ohio. Any subsequent sanction imposed by the Ohio State Board of Pharmacy will be based upon violations separate from those addressed in the August 4, 1995 Orders. The Board may, however, in the event that a subsequent violation is found, consider the violations referenced in the August 4, 1995 Order in determining punishment. This, of course, would be true regardless of whether or not Baxter Healthcare Corporation's licenses had been placed on probation.

Baxter Healthcare Corporation may at any time, by petition to the Ohio State Board of Pharmacy, request that the period of probation set forth in the Orders be shortened or removed entirely from the affected licenses. However, the Ohio State Board of Pharmacy offers no guarantee that such petition will be well-taken.

The provision in the Board's Orders which provides that Baxter Healthcare Corporation "must not violate the drug laws of . . . any other state" means that if Baxter Healthcare facilities are charged either administratively or criminally in another state, and such charges would also constitute a violation of Ohio law, the Board may, in its ordinary discretion, take action. The Board's Orders do not expand the Board's existing jurisdiction or the potential violations upon which it may take action against Baxter in the future. In the event that any future action is taken against Baxter Healthcare as a result of its having been charged with a violation in another state, Baxter Healthcare would of course be afforded all of its due process rights as previously referenced.

The contents of this letter relate only to the above matters.

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

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- 11:10 a.m. The Board was joined by Assistant Attorney General Mary Hollern; Tim Benedict, Robert Cole, and Compliance Agent Kevin Kineer. Mrs. Plant moved that the Board go into Executive Session for the purpose of considering the investigation of complaints against licensees and registrants. The motion was seconded by Mrs. Neuber and a roll call vote was conducted by President Lamping as follows: Cavendish-Yes, Hanna-Yes, Littlejohn-Yes, Maslak-Yes, Miller-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.
- 11:27 a.m. The Executive Session was concluded and the meeting opened to the public. Mr. Maslak moved
- RES. 96-156** that the Board summarily suspend the license of Patrick Joseph Shea, R.Ph. (03-2-15708) for the reason that there is clear and convincing evidence that the continuation of his professional practice and method of distributing controlled substances presents a danger of immediate and serious harm to others. The motion was seconded by Mr. Hanna and approved by the Board (Aye-8/Nay-0).
- RES. 96-157** The Board discussed the fiscal impact of Senate Bill 2 which was passed by the General Assembly last year and becomes effective on July 1, 1996. The Board authorized staff to inform the Office of Budget and Management that the Board will increase fees pursuant to Controlling Board action to cover the decrease in revenue due to the enactment of the legislation. Staff was directed to meet with the OBM analyst to obtain their input on how and when fees should be increased. The Budget committee will prepare recommendations for the Board's consideration during the March meeting.
- RES. 96-158** A draft of the Order in the matter of Richard G. Stauffer was reviewed by the Board for approval. Mrs. Neuber moved that the Order be approved as drafted and issued. The motion was seconded by Mr. Miller and approved (Aye-5/Nay-0/Abstain-3).
- RES. 96-159** Mrs. Plant moved that a proposed amendment to Ohio Administrative Code Rule 4729-5-31 (Criteria for licensure by examination) be drafted by staff to remove the requirement for taking the Federal Drug Law Examination (FDLE) beginning with the September 1996 licensure examinations; and that such rule be adopted by the Board during a Chapter 119. public rules hearing in June of this year. The motion was seconded by Mr. Hanna and approved (Aye-6/Nay-2).
- RES. 96-160** The Executive Director requested that the Board consider providing funds each year to cover the expenses of the public member in attending the annual meeting of the National Association of Boards of Pharmacy. Following consideration of the request, Mrs. Plant moved that the Board approve the attendance of the public member at the annual meeting of the National Association of Boards of Pharmacy and that expenses be reimbursed according to state laws and rules adopted by the Office of Budget and Management. The motion was seconded by Mrs. Neuber and approved (Aye-7/Nay-0/Abstain-1[Repke]).
- RES. 96-161** Mr. Hanna moved that the Board participate in the NABPLEX Computer Study that will be conducted during the June 1996 licensure examinations. The motion was seconded by Mrs. Neuber and approved (Aye-8/Nay-0).

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The Board President announced that the recruitment and reorganization committees would meet according to the following schedule:

<u>MEETING DATE</u>	<u>RECRUITMENT</u>	<u>REORGANIZATION</u>
March 4, 1996	8:00 - 10:00 a.m.	5:00 - 7:00 p.m.
April 22, 1996	8:00 - 10:00 a.m.	5:00 - 7:00 p.m.
May 14, 1996	10:00 a.m. - 12:00 p.m.	to be determined
June 24, 1996	8:00 - 10:00 a.m.	5:00 - 7:00 p.m.
August 5, 1996	3:00 - 5:00 p.m.	to be determined
September 16, 1996	8:00 - 10:00 a.m.	5:00 - 7:00 p.m.
October 21, 1996	8:00 - 10:00 a.m.	5:00 - 7:00 p.m.
November 19, 1996	8:00 - 10:00 a.m.	5:00 - 7:00 p.m.
December 2, 1996	8:00 - 10:00 a.m.	5:00 - 7:00 p.m.

Each committee is to report on its activities at each official meeting of the Board.

The Budget committee will also meet on Tuesday or Thursday morning of each official board meeting (7:00 a.m. - 8:00 a.m.) and as needed prior to the adoption of the 98-99 biennial budget by the General Assembly in 1997.

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

<u>PER DIEM</u>	<u>1/4</u>	<u>1/16</u>	<u>1/22</u>	<u>1/23</u>	<u>1/24</u>	<u>1/25</u>	<u>1/26</u>	<u>Total</u>
Cavendish	-	1	1	1	1	1	1	6
Hanna	-	1	1	1	1	-	1	5
Lamping	-	1	1	1	1	1	1	6
Littlejohn	-	1	-	1	1	1	1	5
Maslak	-	1	1	1	1	1	1	6
Miller	-	-	1	1	1	1	1	5
Neuber	1	-	1	1	1	1	1	6
Plant	-	-	1	1	1	1	1	5
Repke	-	-	1	1	1	1	1	5

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

12:30 p.m. Mrs. Neuber moved that the meeting be adjourned. The motion was seconded by Mrs. Plant and approved (Aye-8/Nay-0).

_____/s/ Paul F Lamping_____
Paul F. Lamping, President
Date

Wickham_____
Director

_____/s/ Franklin Z_____
Franklin Z. Wickham, Executive