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Minutes Of The Meeting
Ohio State Board of Pharmacy
Columbus, Ohio
April 22, 23, 24, 25, 1996

MONDAY, APRIL 22, 1996

10:15 a.m. ROLL CALL

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

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

RES. 96-204 The members present discussed and reviewed matters not requiring formal action by the Board since a quorum was not present. Following discussion with staff, the members present agreed that it would not be necessary for the Board to consider revisions of Ohio Administrative Code Chapter 4729-6 (Impaired Pharmacists) this calendar year.

The Board was joined by Tim Benedict, Compliance Administrator, for the purpose of reviewing the third quarter report regarding field staff activities. The Board continued to receive reports of meetings attended by administrative staff and discuss matters not requiring official action.

11:15 a.m.

The Board members present recessed for lunch.

12:15 p.m.

Board Member John Hanna arrived.

1:07 p.m.

The business meeting of the Board was convened since a quorum was present. Assistant Attorney General Mary Hollern; Tim Benedict, Compliance Administrator; Robert Cole, Compliance Supervisor; and David Rowland, Legal Affairs Administrator, joined the Board. 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, Miller-Yes, Plant-Yes, and Repke-Yes.

2:55 p.m.

RES. 96-205 The Executive Session was concluded and the meeting opened to the public. Mr. Hanna moved that the Board not accept the proposed revisions to the proposed settlement agreement in the matter of Joseph Ferguson, R.Ph. (03-1-10868). The motion was seconded by Mrs Plant and approved by the Board (Aye-5/Nay-0).

RES. 96-206 Mr. Cavendish moved that the Board deny the request of R.Ph. Leon Kessel for an opportunity to personally appear before the Board. The motion was seconded by Mr. Hanna and approved (Aye-5/Nay-0).

RES. 96-207 Mr. Hanna moved that the proposed settlement agreement in the matter of Dominic Bartone, R.Ph. be rejected and that a public hearing be held in the matter pursuant to Ohio Revised Code Chapters 119. and 4729. The motion was seconded by Mr. Repke and approved by the Board (Aye-5/Nay-0).

RES. 96-208 Mr. Benedict presented a request for a waiver from OAC Rule 4729-5-11. Mr. Hanna moved that the Board approve R.Ph. Steven J. LaMania's request to serve as the responsible pharmacist for both Grace Hospital Pharmacy (02-593950) and Tremont Community Pharmacy (02-872900) for one year. The motion was seconded by Mr. Miller and approved (Aye-5/Nay-0).

RES. 96-209 Staff presented proposed language regarding amendments to S.B. 246 concerning the possession and distribution of insulin by health professionals who are certified diabetic educators. Following discussion, Mrs. Plant moved that the Board approve the proposed language. The motion was seconded by Mr. Miller and approved (Aye-5/Nay-0).

Mrs. Plant moved that the Minutes of the March 4, 5, 6, 7, 8, 1996 meeting be approved as amended. Mr. Repke seconded the motion and it was approved (Aye-5/Nay-0).

RES. 96-210 Mrs. Plant moved that the Board approve the 1996-1997 Letters of Agreement to participate in the NABP Bureau of Voluntary Compliance's State Board Newsletter program. The motion was seconded by Mr. Cavendish and approved (Aye-5/Nay-0).

The Board then considered the proposed revisions by the federal Drug Enforcement Administration announced in the Tuesday, March 5, 1996 Federal Register (pp 8503-8534). The Board members did not have any comments to submit to DEA regarding the proposed revisions.

RES. 96-211 The Board then considered correspondence from Kayla B. Rynor, General Counsel for ProxyMed, Inc., regarding their pharmacy management software program - ProxyScript. Following discussion, the Board directed staff to notify ProxyMed, Inc. that pharmacists could dispense drugs pursuant to prescriptions transmitted electronically under the same conditions as that spelled out by the Board in Resolution 96-149 (01/25/96). All prescriptions prepared by the computer and issued in writing at the prescribers office, however, would have to be manually signed by the prescriber as required in OAC Rule 4729-5-30.

The Board then discussed a request from Syncor Pharmacy Services for an opinion regarding a new ordering system for radiopharmaceutical prescriptions. Following discussion, staff was directed to obtain additional information and input from field staff concerning the proposal before the June 1996 meeting and final consideration by the Board.

The next agenda item considered by the Board was a request from Defiance Hospital regarding a direct order entry system for prescription drug therapy. Following consideration of the request and information provided by Kelly J. Swearingen, Director of Pharmacy Services, staff was instructed to obtain additional information prior to the Board's June 1996 meeting.

RES. 96-212 The Board then considered the request of Eric M. Jezierski for permission to sit for the reciprocity hearing on Tuesday, April 23, 1996 at 1:00 p.m. and obtain his license to practice pharmacy in Ohio by reciprocity once the Official Application has been received by the Board office and approved. Following discussion, Mrs. Plant moved that the request be approved. The motion was seconded by Mr. Cavendish and approved (Aye-5/Nay-0).

4:25 p.m.

The meeting was recessed until 8:00 a.m., Tuesday, April 23, 1996.

TUESDAY, APRIL 23, 1996

8:15 a.m. ROLL CALL

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

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

8:30 a.m.

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting a hearing in the matter of R.Ph. David J. Bralich, Struthers, Ohio pursuant to Revised Code Chapters 119. and 4729.

10:46 a.m.

The record in the matter was closed and Mrs. Plant moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony received during the hearing. The motion was seconded by Mr. Miller 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.

10:52 a.m.

RES. 96-213 The Executive Session was concluded and the meeting opened to the public. Mr. Cavendish moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket Nos. D-950530-061 and D-951103-024)

In The Matter Of:

DAVID J. BRALICH, R.Ph.
210 Hamilton Boulevard
Struthers, Ohio 44471
(R.Ph. No. 03-1-12180)

INTRODUCTION

THE MATTER OF DAVID J. BRALICH CAME TO HEARING ON APRIL 23, 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.

DAVID J. BRALICH 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
 - (2) Nicholas J. Kavoklis, D.O.
 - (3) Detective Thomas G. Malone, Youngstown Police Department, Special Investigations Unit, Pharmaceutical Diversion.
 - (4) George Pavlich, Ohio State Board of Pharmacy
 - (5) Kevin Joseph Kinneer, Ohio State Board of Pharmacy
- Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity for Hearing letter dated May 30, 1995.
- (2) Exhibit 1A--Hearing Request letter dated June 20, 1995.
- (3) Exhibit 1B--Hearing Schedule letter dated June 23, 1995.
- (4) Exhibit 1C--Pharmacist File Front Sheet of David J. Bralich showing original date of registration as August 10, 1977.

- (5) Exhibit 1D--Renewal Application for Pharmacist License, No. 03-1-12180, of David J. Bralich for a license to practice pharmacy in Ohio from September 15, 1994, to September 15, 1995, dated July 12, 1994.
- (6) Exhibit 1E--Continuance Request letter dated September 11, 1995.
- (7) Exhibit 1F--Hearing Schedule letter dated September 19, 1995.
- (8) Exhibit 1G--Summary Suspension Order/Notice of Opportunity for Hearing letter dated November 3, 1995.
- (9) Exhibit 1H--Continuance Request letter dated December 19, 1995.
- (10) Exhibit 1I--Hearing Schedule letter dated December 22, 1995.
- (11) Exhibit 1J--Amendment Notice dated March 28, 1996.
- (12) Exhibit 1K--Notice to Withdraw as Counsel by John J. Dixon dated March 29, 1996.
- (13) Exhibit 1L--Continuance Request letter dated April 3, 1996.
- (14) Exhibit 1M--Letter from William T. Winsley dated April 9, 1996.
- (15) Exhibit 2--Certified copy of Judgment Entry from the Mahoning County Common Pleas Court, Case No. 93 CR 639, of David Bralich dated January 6, 1994; certified copy of Judgment Entry from the Mahoning County Common Pleas Court, Case No. 93 CR 639, of David Bralich dated November 8, 1993; certified copy of Judgment Entry from the Mahoning County Common Pleas Court, Case No. 93 CR 639, dismissing counts II and III of the Indictment of David Bralich dated November 8, 1993; three-page certified copy of Plea of Guilty from the Mahoning County Common Pleas Court, Case No. 93 CR 639, of David Bralich dated November 8, 1993; and two-page certified copy of Indictment from the Mahoning County Common Pleas Court, Case No. 93 CR 639, of David Bralich dated June 25, 1993.
- (16) Exhibit 3A--Copy of twenty-five-page report of Valley Drug Company, Item History by Customer, for Nikels Pharmacy dated from October 16, 1992, to November 6, 1992.
- (17) Exhibit 3B--Copy of seven-page report of Valley Drug Company, Item History by Customer, for Nikels Pharmacy dated from October 16, 1992, to November 6, 1992.
- (18) Exhibit 4--Sixty-seven-page Transcript of Interview of David Bralich with George Pavlich and Tom Malone on December 21, 1992.
- (19) Exhibit 5A--Copy of Youngstown Police Department Miranda Rights of David J. Bralich signed and dated December 21, 1992.
- (20) Exhibit 5B--Authorization for search of residence at 210 Hamilton, Struthers, Ohio of David J. Bralich dated December 21, 1992.
- (21) Exhibit 5C--Three-page Receipt/Inventory for property taken from 210 Hamilton, Struthers dated December 21, 1992; and copy of Return Receipt for property seized at 210 Hamilton, Struthers dated March 23, 1994.
- (22) Exhibit 5D--Two-page handwritten Voluntary Statement of David Bralich dated December 21, 1992; and Youngstown Police Department Miranda Rights of David J. Bralich signed and dated December 21, 1992.
- (23) Exhibit 6--Two-page handwritten statement of Sharon Ruth MacDonald signed and notarized on March 2, 1994.
- (24) Exhibit 7--Two-page handwritten statement of Thomas A. Barber signed and notarized on March 2, 1994.
- (25) Exhibit 8--Four-page statement of Dr. Nicholas J. Kavoklis signed and notarized on February 22, 1994.
- (26) Exhibit 9--Prescription No. 142466.
- (27) Exhibit 9A--Two-page patient profile of Gillam Roma dated from January 23, 1991, through November 1, 1991.
- (28) Exhibit 10--Prescription No. 146126.
- (29) Exhibit 10A--Patient profile of Katherine Artis dated from January 4, 1991, through December 23, (sic 1991).
- (30) Exhibit 11--Prescription No. 142427.
- (31) Exhibit 12--Prescription No. 142453.
- (32) Exhibit 13--Prescription No. 141917.
- (33) Exhibit 13A--Two-page patient profile of Pinkie Davis dated from December 19, 1989, through September 24, 1991.
- (34) Exhibit 14--Prescription No. 142465.
- (35) Exhibit 15--Prescription No. 143324.
- (36) Exhibit 15A--Two-page patient profile of Ana Harris and family dated from March 25, 1991, through February 19, 1992.
- (37) Exhibit 16--Prescription No. 143876.
- (38) Exhibit 16A--Three-page patient profile of Carole and Minor Smith dated from March 5, 1991, through October 13, 1992.

- (39) Exhibit 17--Prescription No. 143274.
- (40) Exhibit 17A--Three-page patient profile of Arthur Robinson dated from December 14, 1990, through February 19, 1992.
- (41) Exhibit 18--Prescription No. 142424.
- (42) Exhibit 19--Copy of handwritten statement of Kim Hignight signed and notarized on October 18, 1995.
- (43) Exhibit 20--Two-page copy of handwritten statement of Sally A. Sigler signed and notarized on October 18, 1995.
- (44) Exhibit 21A--Microcassette tape of Part One of Interview of David J. Bralich with K. Joe Kinneer, David Gallagher, and Paul Kover on October 31, 1995.
- (45) Exhibit 21B--Microcassette tape of Part Two of Interview of David J. Bralich with K. Joe Kinneer, David Gallagher, and Paul Kover on October 31, 1995.
- (46) Exhibit 23--Copy of handwritten statement of David J. Bralich signed and notarized on October 30, 1995.
- (47) Exhibit 24--Copy of Release Form of David J. Bralich signed October 31, 1995 (sic October 30, 1995) and notarized on October 30, 1995; and attached copy of twenty-six pages of medical records from Dunlap Memorial Hospital.
- (48) Exhibit 25--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Soma Compound dated January 12, 1995.
- (49) Exhibit 26--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Soma 350mg dated January 12, 1995.
- (50) Exhibit 26A--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Carisoprodol 350mg dated January 12, 1995.
- (51) Exhibit 27--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Darvocet N-100 dated January 12, 1995.
- (52) Exhibit 27A--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Propoxyphene Napsylate 100 dated January 12, 1995.
- (53) Exhibit 28--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Xanax 1mg dated January 12, 1995.
- (54) Exhibit 28A--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Alprazolam 1mg dated January 12, 1995.
- (55) Exhibit 29--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Xanax 0.5mg dated January 12, 1995.
- (56) Exhibit 29A--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Alprazolam 0.5mg dated January 12, 1995.
- (57) Exhibit 30--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Xanax .25mg dated January 12, 1995.
- (58) Exhibit 31--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Ionamin 30mg dated January 12, 1995.
- (59) Exhibit 31A--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Phentermine 30mg dated January 12, 1995.
- (60) Exhibit 32--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Phentermine 37.5mg dated January 12, 1995.
- (61) Exhibit 33--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Phendimetrazine 35mg dated January 12, 1995.
- (62) Exhibit 34--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Pondimin 20mg dated January 12, 1995.
- (63) Exhibit 35--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Vicodin 5/500 dated January 12, 1995.
- (64) Exhibit 35A--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Hydrocodone 5mg with APAP 500mg dated January 12, 1995.
- (65) Exhibit 36--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Vicodin ES 7.5/750 dated January 12, 1995.
- (66) Exhibit 36A--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Hydrocodone 7.5mg with APAP 750mg dated January 12, 1995.
- (67) Exhibit 37--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Lorcet 10/650 dated January 12, 1995.
- (68) Exhibit 38--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Soma Compound with Codeine dated January 12, 1995.
- (69) Exhibit 39--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Halcion .25mg dated January 12, 1995.

- (70) Exhibit 40--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Valium 2mg dated January 12, 1995.
- (71) Exhibit 40A--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Diazepam 2mg dated January 12, 1995.
- (72) Exhibit 41--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Valium 5mg dated January 12, 1995.
- (73) Exhibit 41A--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Diazepam 5mg dated January 12, 1995.
- (74) Exhibit 42--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Valium 10mg dated January 12, 1995.
- (75) Exhibit 42A--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Family Practice Center Pharmacy for Diazepam 10mg dated January 12, 1996.
- (76) Exhibit 43--Clear plastic bag with Orrville Police Department evidence sticker as follows: Case No. 285-95, Re: David Bralich, containing 4" x 2½" manila envelope containing 1 Phentermine 30mg capsule.
- (77) Exhibit 44--Accountability Statement of Penn-Ohio Drugs for Xanax .5mg and Alprazolam .5mg dated February 25, 1996.
- (78) Exhibit 45--Accountability Statement of Penn-Ohio Drugs for Vicodin ES 7.5mg and Hydrocodone Bitartrate 7.5mg dated February 25, 1996.
- (79) Exhibit 46--Accountability Statement of Penn-Ohio Drugs for Darvocet N-100 and Propoxyphene/Nap/APAP dated February 25, 1996.
- (80) Exhibit 47--Accountability Statement of Penn-Ohio Drugs for Ritalin 10mg and Methylphenidate 10mg dated February 25, 1996.
- (81) Exhibit 48--Accountability Statement of Penn-Ohio Drugs for Vicodin 5mg and Hydrocodone Bitartrate 5mg dated February 25, 1996.
- (82) Exhibit 49--Accountability Statement of Penn-Ohio Drugs for Xanax 0.25mg and Alprazolam 0.25mg dated February 25, 1996.
- (83) Exhibit 50--Accountability Statement of Penn-Ohio Drugs for Ritalin 20mg and Methylphenidate 20mg dated February 25, 1996.

Respondent's Exhibits:

- (1) Exhibit A--Two-page letter from David J. Bralich dated April 19, 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) On May 30, 1995; November 3, 1995; and March 28, 1996; David J. Bralich 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 receipts of June 5, 1995; November 6, 1995; and March 29, 1996; David J. Bralich received the letters of May 30, 1995; November 3, 1995; and March 28, 1996; informing him of the allegations against him, and his rights.
- (3) David J. Bralich requested a hearing and a hearing was scheduled for April 23, 1996. On or about April 19, 1996, David J. Bralich submitted contentions in writing to the Board; however, David J. Bralich was not present for the hearing.
- (4) Records of the Board of Pharmacy indicate that David J. Bralich was originally licensed in the state of Ohio on August 10, 1977, pursuant to examination. During the relevant time periods alleged herein, David J. Bralich was the Responsible Pharmacist at Nikels Pharmacy in Youngstown, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code. Further, on November 3, 1995, David J. Bralich's license to practice pharmacy in the state of Ohio was summarily suspended in accordance with Divisions (A) and (B) of Section 3719.121 of the Ohio Revised Code.
- (5) David J. Bralich was, on or about January 6, 1994, convicted in the Common Pleas Court of Mahoning County, Ohio, of Theft in violation of Section 2913.02 of the Ohio Revised

Code, a felony of the third degree, to wit: David J. Bralich was convicted for stealing from his pharmacy employer.

- (6) David J. Bralich did, from October 16, 1992, through November 6, 1992, and on other dates uncertain, with the purpose to deprive, knowingly obtain or exert control over the property of another, Nikels Pharmacy, beyond the express or implied consent of the owner, the property being valued at greater than \$5,000.00 and consisting of dangerous drugs, to wit: David J. Bralich stole merchandise and drugs from his employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (7) David J. Bralich did, on or about the following dates, intentionally make and/or knowingly possess false or forged prescriptions, to wit: David J. Bralich created and maintained on file the following unauthorized prescriptions:

<u>Rx No</u>	<u>Date</u>	<u>Quantity</u>	<u>Drug</u>	<u>Refills</u>
142466	11/01/91	60	Oxazepam 30mg	5
146126	12/23/91	14	Ionamin 30mg	0
142427	10/30/91	6oz	Promethazine VC w/Codeine	0
142453	11/01/91	6oz	Promethazine VC w/Codeine	0
141917	10/23/91	30	Valium 5mg	5
142465	11/01/91	30	Diazepam 5mg	5
143324	11/12/91	30	Tylenol #3 w/Codeine	0
143876	11/19/91	30	Valium 5mg	0
143274	11/12/91	30	Diazepam 5mg	5
142424	10/30/91	60	Tylenol #3 w/Codeine	5

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

- (8) David J. Bralich did, on or about October 30, 1995, admit to agents of the Board that he "has a personal problem" and that he steals and abuses controlled substances. David J. Bralich has admitted that his preferred drug for theft and abuse was Darvocet but has now come to be Vicodin ES and Xanax; David J. Bralich has admitted that his thefts and addiction have been continuing for approximately six years.
- (9) David J. Bralich did, at various times over the past six years, knowingly obtain or exert control over dangerous drugs, the property of Nikels Pharmacy in Youngstown, Ohio, beyond the express or implied consent of the owner, to wit: David J. Bralich admittedly stole drugs for his own personal abuse.
- (10) David J. Bralich did, from June 8, 1993, through October 25, 1995, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Family Practice Center Pharmacy, 365 South Crownhill Road, Orrville, Ohio 44667, beyond the express or implied consent of the owner, to wit: David J. Bralich stole the following dangerous drugs from his employer:

<u>Drug</u>	<u>Quantity</u>
Soma 350mg (brand)	110
Carisoprodol 350mg (generic)	3,153
Darvocet N-100	520
Propoxyphene Napsylate/APAP (generic)	4,510
Xanax 1mg	922
Alprazolam 1mg	1,004
Xanax 0.5mg	2,145
Alprazolam 0.5mg	5,095
Xanax 0.25mg	4,210
Ionamin 30mg	134
Phentermine 30mg	4,298
Phentermine 37.5mg	520
Phendimetrazine 35mg	3,227
Pondimin 20mg	248
Vicodin 5mg/APAP 500mg	16
Hydrocodone 5mg/APAP 500mg	4,091

Vicodin ES 7.5mg/APAP 750mg	366
Hydrocodone 7.5mg/APAP 750mg	797
Lorcet 10mg/APAP 650mg	230
Soma Compound w/Codeine 16mg	173
Halcion .25mg	758
Valium 2mg	60
Diazepam 2mg	218
Valium 5mg	262
Diazepam 5mg	3,220
Valium 10mg	552
Diazepam 10mg	904
Fastin 30mg	1

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

- (11) David J. Bralich did, from June 8, 1995, through October 30, 1995, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property Penn-Ohio Drugs, 850 S. Irvine Avenue, Masury, Ohio 44438 beyond the express or implied consent of the owner, to wit: David J. Bralich stole the following dangerous drugs from his employer:

<u>Drug</u>	<u>Quantity</u>
Alprazolam .5mg	504
Hydrocodone Bitartrate 7.5mg	1,166
Propoxyphene Napsylate/APAP	6,888

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 (11) of the Findings of Fact constitute being guilty of gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (5) 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.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (8) and (9) 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.
- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (7) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation 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 November 3, 1995.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of David J. Bralich:

- (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. 03-1-12180, held by David J. Bralich 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. 03-1-12180, held by David J. Bralich 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. 03-1-12180, held by David J. Bralich 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 pharmacist identification card, No. 03-1-12180, held by David J. Bralich 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 pharmacist identification card, No. 03-1-12180, held by David J. Bralich 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. Miller and approved (Aye-7/Nay-0).

11:00 a.m.

The Board recessed for lunch.

1:00 p.m.

RES. 96-214

The Board members reconvened in Room 1919 for the purpose of meeting with the following candidates for licensure pursuant to Ohio Revised Code Section 4729.09 and Ohio Administrative Code Rule 4729-5-32:

ARTHUR-MENSAH, L'TANYA	03-2-21606	DISTRICT OF COLUMBIA
BOBEK, MARY BETH	03-2-21598	ILLINOIS
CAPOZZI, DONNA L.	03-2-21627	NEW JERSEY
CHILDS, KNIKKI C.	03-2-21599	TEXAS
DAWSON, JULIA L.	03-2-21576	KENTUCKY
DUDASH, SUSANNE L.	03-2-21480	PENNSYLVANIA
FARONE, FOSTER D.	03-2-21590	PENNSYLVANIA
FLYNN, DAVID E.	03-2-21584	WEST VIRGINIA
HAAS, JAMES B.	03-2-21605	INDIANA
HARDMAN, HUGH L.	03-2-21593	GEORGIA
MASCALI, MICHAEL J.	03-2-21591	NEW YORK
McQUADE, MICHAEL T.	03-2-21631	ARIZONA
NGUR, DAN O.	03-2-21641	TEXAS
OEHLERS, ANN MARIE	03-2-21592	MICHIGAN
PARTSCH, MATTHEW THOMAS	03-2-21628	PENNSYLVANIA
RICHTER, NORMAN C.	03-2-21597	NEW YORK

SCHICK, HARRY J.	03-2-21596	TEXAS
STALLSMITH, JEANNINE K.	03-2-21604	VIRGINIA
TEMPLETON, ELIZABETH A.	03-2-21582	ARIZONA
TURKALY, BETH A.	03-2-21607	WEST VIRGINIA
ZAKHEM, SAMI M.	03-2-21600	TEXAS

Mrs. Plant moved that the successful candidates be issued licenses to practice in Ohio. The motion was seconded by Mrs. Neuber and approved (Aye-7/Nay-0).

1:45 p.m.

The Board reconvened in Room 1914 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 matter of R.Ph. Arch Joseph Weber, Pickerington, Ohio.

3:22 p.m.

The hearing was concluded and the Board recessed for fifteen minutes.

3:40 p.m.

Mrs. Plant moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony received in the matter of Arch Joseph Weber, R.Ph.. 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

3:53 p.m.

RES. 96-215

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

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-960123-035)

In The Matter Of:

ARCH JOSEPH WEBER, R.Ph.

8700 Ashford Lake NW
Pickerington, Ohio 43147
(R.Ph. No. 03-3-14610)

INTRODUCTION

THE MATTER OF ARCH JOSEPH WEBER CAME TO HEARING ON APRIL 23, 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.

ARCH JOSEPH WEBER WAS REPRESENTED BY WILLIAM J. MOONEY, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Robert Clemens, Sun Oil - Security, formerly with Revco Loss Prevention
- (2) Rebecca Woods, Responsible Pharmacist, Revco #3188, Lancaster, Ohio
- (3) Sgt. Dan Patten, Lancaster Police Department
- (4) William L. Padgett, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Arch Joseph Weber, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity for Hearing letter dated January 23, 1996.
- (2) Exhibit 1A--Hearing Request letter dated February 15, 1996.
- (3) Exhibit 1B--Hearing Schedule letter dated February 23, 1996.
- (4) Exhibit 1C--Addendum Notice dated February 23, 1996.
- (5) Exhibit 1D--Pharmacist File Front Sheet of Arch Joseph Weber showing original date of registration as April 26, 1982; and Renewal Application for Pharmacist License, No. 03-3-14610, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, dated August 3, 1995.
- (6) Exhibit 2A--Thirteen-page transcript of interview of Arch Weber with Bill Padgett, Tim Benedict, Sgt. Dan Patton, and Bob Clemens on January 6, 1996; and attached copy of Lancaster Police Department, Rights under the Miranda Warning, signed by Arch Weber on January 5, 1996, at 10:50 p.m.
- (7) Exhibit 3--Revco Inventory of Tussionex, Hycodan tablets, Hycodan syrup, and Hydromet syrup taken on Wednesday, January 3, 1996, at 11:00 p.m.
- (8) Exhibit 4--Revco Inventory of Tussionex, Hycodan tablets, Hycodan syrup, and Hydromet syrup taken on Friday, January 5, 1996, at 9:00 a.m.
- (9) Exhibit 5--Revco Inventory of Tussionex, Hycodan tablets, Hycodan syrup, and Hydromet syrup taken on Saturday, January 6, 1996, at 9:00 a.m.
- (10) Exhibit 6--Revco Inventory of Tussionex, Hycodan tablets, Hycodan syrup, and Hydromet syrup taken on Saturday, January 6, 1996, at 10:00 p.m.
- (11) Exhibit 7--Two full, unmarked, amber, 2oz. bottles of Tussionex syrup in a Revco bag.
- (12) Exhibit 8--Sixty-three pieces of Nicorette gum.
- (13) Exhibit 8A--Empty 900ml Tussionex stock bottle.
- (14) Exhibit 9--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Revco #1388 (*sic*) for Tussionex syrup dated February 16, 1996.
- (15) Exhibit 10--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Revco #3188 for Vicodin ES dated February 16, 1996.
- (16) Exhibit 11--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Revco #3188 for Lortab 7.5/500 dated February 16, 1996.
- (17) Exhibit 12--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Revco #3188 for Lorcet Plus dated February 16, 1996.
- (18) Exhibit 13--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Revco #3188 for Lorcet 10/650 dated February 16, 1996.
- (19) Exhibit 14--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Revco #3188 for Hydrocodone 7.5/750 dated February 16, 1996.
- (20) Exhibit 15--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Revco #3188 for Hydrocodone 5/500 dated February 16, 1996.
- (21) Exhibit 16--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Revco #3188 for Hydrocodone 10/650 dated February 16, 1996.
- (22) Exhibit 17--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Revco #3188 for Hydrocodone 7.5/650 dated February 16, 1996.
- (23) Exhibit 18--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Revco #3188 for Hycodan dated February 16, 1996.
- (24) Exhibit 19--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Revco #3188 for Hycodan Syrup dated February 16, 1996.
- (25) Exhibit 20--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Revco #3188 for Hydromet dated February 16, 1996.
- (26) Exhibit 21--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Revco #3188 for Hydrocodone 7.5/500 dated February 16, 1996.
- (27) Exhibit 22--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Revco #3188 for Vicodin tablets dated February 16, 1996.

Respondent's Exhibits:

- (1) Exhibit A--Copy of Pharmacists Rehabilitation Organization, Inc., Pharmacist's Recovery Contract of Arch Weber dated March 10, 1996; copy of four pages of AA Meeting Attendance Verification of Arch Weber dated from February 27, 1996, through April 22, 1996; copy if urine

drug screen report dated March 28, 1996; and two-page Shepherd Hill Hospital Recovery Plan of Arch Weber dated February 23, 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 indicate that Arch Joseph Weber was originally licensed to practice pharmacy in the state of Ohio on April 26, 1982; and, on January 23, 1996, Arch Joseph Weber's license was summarily suspended in accordance with Divisions (A) and (B) of Section 3719.121 of the Ohio Revised Code.
- (2) Arch Joseph Weber is addicted to the use of controlled substances, to wit: Arch Joseph Weber has stolen and ingested controlled substances while practicing pharmacy at Revco #3188, 1143 East Main Street, Lancaster, Ohio; Arch Joseph Weber has admitted to stealing and ingesting approximately 2 to 3 ounces of Tussionex or its equivalent, 15 tablets of Lortab or Vicodin, and Hycodan tablets on a routine basis; and has admitted to being addicted to Hydrocodone, a schedule II controlled substance.
- (3) Arch Joseph Weber did, on or about January 4, 1996, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Revco #3188, beyond the express or implied consent of Revco, to wit: on this date Arch Joseph Weber stole the following schedule III controlled substances: 160ml of Tussionex, 4 tablets of Hycodan, and 180ml of Hydromet syrup. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Arch Joseph Weber did, on or about January 6, 1996, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Revco #3188, beyond the express or implied consent of Revco, to wit: on this date Arch Joseph Weber stole 200ml of Tussionex and 14 tablets of Hycodan, schedule III controlled substances, and 63 units of Nicorette gum, a dangerous drug. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (5) Arch Joseph Weber did, from July 19, 1995, through January 6, 1996, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Revco #3188, beyond the express or implied consent of Revco, to wit: Arch Joseph Weber admittedly stole the following controlled substances while practicing pharmacy:

<u>Drug Name</u>	<u>Shortage</u>
Tussionex Syrup	7,560 ml
Vicodin ES	27 tablets
Lortab 7.5/500	467 tablets
Lorcet Plus	6 tablets
Lorcet 10/650	645 tablets
Hydrocodone 7.5/750	96 tablets
Hydrocodone 5/500	284 tablets
Hydrocodone 10/ 650	254 tablets
Hydrocodone 7.5/ 650	69 tablets
Hycodan	1,002 tablets
Hycodan Syrup	720 ml
Hydromet Syrup	2,280 ml
Hydrocodone 7.5/500	233 tablets
Vicodin	4 tablets

The foregoing audit figures are summarized as follows: Arch Joseph Weber stole 3,087 various controlled substances in tablet form and 10,560ml of various controlled substances in liquid form. 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 paragraphs (2) through (5) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) 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.

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 January 23, 1996.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Arch Joseph Weber:

- (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 suspends the pharmacist identification card, No. 03-3-14610, held by Arch Joseph Weber indefinitely, effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Arch Joseph Weber 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) After June 1, 1997, the Board will consider any petition filed by Arch Joseph Weber for a hearing, pursuant to Revised Code Chapter 119., upon the question of the reinstatement of his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
 - (1) Arch Joseph Weber 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:
 - (a) random, **observed** urine screens shall be conducted at least every three months. The urinalysis drug screens must report testing of alcohol and testing of creatinine as the dilutional standard or specific gravity;
 - (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) Arch Joseph Weber must make restitution to Revco #3188 for the drugs listed in paragraph (5) of the Findings of Fact.
 - (3) Arch Joseph Weber must submit to the Board the following documentation upon petitioning for reinstatement:
 - (a) Outline of his presentation to the Board.
 - (b) Any testimonials from others.

- (c) All contract(s) with treatment providers and written documentation from the treatment provider(s) regarding compliance with the program(s).
- (d) Copies of all urine screens reports.
- (e) Evidence of complete payment of restitution to Revco #3188.
- (f) Evidence of continuing pharmacy education if required to report during the period of suspension.

The documentation must be submitted to the Board with the request for a reinstatement hearing and will be reviewed by the Compliance Administrator. When all of the required information is received, complete and in proper form, the reinstatement hearing will be scheduled.

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-7/Nay-0).

Nancy Little, Licensing Administrator, reviewed the written report on licensing activities and matters dated April 22, 1996 that was provided to Board members at the beginning of the week.

4:50 p.m.

The Board recessed until Wednesday, April 24, 1996, at 8:00 a.m.

WEDNESDAY, APRIL 24, 1996

8:15 a.m. ROLL CALL

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

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

The Board reviewed correspondence and reports that did not require official action.

8:45 a.m.

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting a hearing in the matter of John A. Dziech, R.Ph. (03-1-04584) pursuant to Revised Code Chapters 119. and 4729.

2:22 p.m.

The hearing was concluded and the record closed. Mr. Hanna moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony received during the hearing. The motion was seconded by Mr. Littlejohn 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.

2:55 p.m.

RES. 96-216 The Executive Session was concluded and the meeting opened to the public. Mrs. Neuber moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-950503-058)

In The Matter Of:

JOHN A. DZIECH, R.Ph.

10310 Little Turtle Lane

Piqua, Ohio 45356

(R.Ph. No. 03-1-04584)

INTRODUCTION

THE MATTER OF JOHN A. DZIECH CAME TO HEARING ON APRIL 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.

JOHN A. DZIECH WAS REPRESENTED BY RALPH BREITFELLER, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) David Avery, Ohio State Board of Pharmacy
- (2) Gregory C. Berquist, formerly with the Regional Narcotics Unit
- (3) David Henry, District Manager, Revco Loss Prevention
- (4) Jack P. Steinhilber, M.D.
- (5) Mary Steinhilber

Respondent's Witnesses:

- (1) Betty Dziech, Wife of Respondent
- (2) John A. Dziech, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity for Hearing letter dated May 3, 1995.
- (2) Exhibit 1A--Hearing Request letter dated May 30, 1995.
- (3) Exhibit 1B--Hearing Schedule letter dated June 1, 1995.
- (4) Exhibit 1C--Pharmacist File Front Sheet of John A. Dziech showing original date of registration as August 1, 1950.
- (5) Exhibit 1D--Renewal Application for Pharmacist License, No. 03-1-04584, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of John A. Dziech dated June 30, 1995.
- (6) Exhibit 1E--Hearing Schedule letter dated November 8, 1995.
- (7) Exhibit 2--Copy of two-page Revco Prescription Access Link Patient Insurance Profile of John A. Dziech dated June 12, 1991.
- (8) Exhibit 2A--Copy of prescription number 0443-193418.
- (9) Exhibit 2B--Copy of statement of Dr. Jack P. Steinhilber signed and notarized on June 28, 1991.
- (10) Exhibit 2C--Copy of eight pages of medical records from Dr. Steinhilber's office regarding patient Jack Dziech dated from May 10, 1972, through November 30, 1990.

- (11) Exhibit 2D--Copy of three-page Regional Narcotics Unit Supplementary Report, Case No. 44055, dated July 31, 1991; and copy of seven-page facsimile from Revco D. S., Inc., Corporate Headquarters dated August 5, 1991.
- (12) Exhibit 3--Copy of prescription number 0443-249104 dated July 11, 1990.
- (13) Exhibit 4--Copy of prescription number 0443-249627 dated September 4, 1990.
- (14) Exhibit 5--Copy of prescription number 0443-193418 dated February 8, 1991.
- (15) Exhibit 6--Copy of prescription number 0443-252240 dated February 8, 1991.
- (16) Exhibit 7--Copy of prescription number 0443-255339 dated March 23, 1991.
- (17) Exhibit 8--Copy of four-page Revco Prescription Access Link Patient Medical Profile of Betty G. Dziech dated June 11, 1991.
- (18) Exhibit 9--Copy of prescription number 193562 dated January 23, 1990.
- (19) Exhibit 10--Copy of ten pages of medical records from Dr. Steinhilber's office regarding patient Betty Dziech dated from June 21, 1960, through March 9, 1990.
- (20) Exhibit 11--Copy of prescription number 0443-244207 dated February 13, 1990.
- (21) Exhibit 12--Copy of prescription number 0443-247581 dated May 23, 1990.
- (22) Exhibit 13--Copy of prescription number 0443-248609 dated June 25, 1990.
- (23) Exhibit 14--Copy of prescription number 0443-251134 dated September 18, 1990.
- (24) Exhibit 15--Copy of prescription number 0443-253585 dated December 10, 1990.
- (25) Exhibit 16--Copy of prescription number 0443-193562 dated February 22, 1991.
- (26) Exhibit 17--Copy of prescription number 0443-255810 dated March 18, 1991.
- (27) Exhibit 18--Copy of prescription number 0443-244207 dated March 18, 1991.
- (28) Exhibit 19--Copy of prescription number 0443-251134 dated March 23, 1991.
- (29) Exhibit 20--Copy of prescription number 1808-000106 dated March 29, 1991.
- (30) Exhibit 21--Copy of prescription number 0443-248609 dated April 7, 1991.
- (31) Exhibit 22--Copy of prescription number 0443-253585 dated April 21, 1991.
- (32) Exhibit 23--Copy of prescription number 1808-000322 dated May 13, 1991.
- (33) Exhibit 24--Copy of prescription number 0443-250201 dated August 17, 1990.
- (34) Exhibit 25--Copy of prescription number 0443-255384 dated February 9, 1991.
- (35) Exhibit 26--Five-page certified Journal Entry from the Auglaize County Common Pleas Court, Case No. 91-C-142, of John A. Dziech, Sr. dated November 8, 1991.
- (36) Exhibit 27--Sixty-six page transcribed deposition of Jack P. Steinhilber, M.D. taken on January 5, 1996.
- (37) Exhibit 28--Twenty-three page transcribed deposition of Mary Steinhilber taken on January 5, 1996.
- (38) Exhibit 29--Video cassette taped deposition of Jack P. Steinhilber, M.D. and Mary Steinhilber taken on January 5, 1996.

Respondent's Exhibits:

- (1) Exhibit A--Two-page Affidavit of Jack P. Steinhilber, M.D. signed and notarized on October 5, 1995; and attached two-page copy of letter from Jack P. Steinhilber, M.D. dated July 16, 1992.
- (2) Exhibit B--Affidavit of James L. Leonard, M.D. signed and notarized on October 5, 1995; and attached copy of letter from James L. Leonard, M.D. dated October 1, 1991.
- (3) Exhibit C--Copy of Ohio State Board of Pharmacy Incident Report regarding R.Ph. John A. Dziech, Sr. dated June 12, 1991.
- (4) Exhibit D--Two-page copy of Regional Narcotics Unit Incident Report regarding John A. Dziech, Sr. (Jack) dated June 12, 1991.
- (5) Exhibit E--Copy of Ohio State Board of Pharmacy Report of Investigation regarding R.Ph. John A. Dziech, Sr. dated June 23, 1991.
- (6) Exhibit F--Copy of Renewal Application for Pharmacist License, No. 03-1-04584, for a license to practice pharmacy in Ohio from September 15, 1992, to September 15, 1993, of John A. Dziech dated August 4, 1992, with the following attachments: copy of five-page Journal Entry in the Auglaize County Common Pleas Court, Case No. 91-C-142, of John A. Dziech, Sr. dated November 8, 1991; copy of letter from John E. Hemm, not dated; copy of two-page letter from Jack P. Steinhilber, M.D. dated July 16, 1992; copy of letter from James L. Leonard, M.D. dated October 1, 1991; copy of two-page response by Dr. Chen regarding prescriptions for Rhett Dziech signed and witnessed on October 5, 1991; and copy of three-page letter from John A. Dziech, Sr. dated July 31, 1992.
- (7) Exhibit G--Six-page copy of medical records of Dr. Jack Steinhilber regarding Jack (John A.) Dziech dated from July 7, 1990, through May 18, 1995.
- (8) Exhibit H--Six-page copy of medical records of Dr. Jack Steinhilber regarding Betty Dziech dated from November 30, 1987, through May 18, 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 of Pharmacy indicate that John A. Dziech was originally licensed in the state of Ohio on August 1, 1950, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) John A. Dziech was, on or about November 8, 1991, in the Common Pleas Court of Auglaize County, Ohio, convicted of three counts of Attempted Possession of Criminal Tools, in violation of Sections 2923.02 and 2923.24 of the Ohio Revised Code, misdemeanors of the first degree.

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 (2) 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.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy hereby places the pharmacist identification card, No. 03-1-04584, held by John A. Dziech on probation for one year, effective as of the date of the mailing of this Order. The terms of probation are as follows:

- (A) John A. Dziech may not dispense medication pursuant to prescriptions written for himself or his family members as patients, nor may he record any such oral prescriptions.
- (B) John A. Dziech may not serve as a responsible pharmacist.
- (C) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of pharmacy hereby declares that John A. Dziech's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns.
- (D) John A. Dziech must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (E) John A. Dziech must abide by the rules of the Ohio State Board of Pharmacy.
- (F) John A. Dziech must comply with the terms of this Order.

The Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

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

MOTION CARRIED.

SO ORDERED.

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

3:15 p.m.

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting a hearing in the matter of John Allen Dziech, R.Ph. (03-3-11853) pursuant to Revised Code Chapters 119. and 4729.

5:34 p.m.

The hearing was recessed until Thursday, April 25, 1996 at 8:00 a.m.

THURSDAY, APRIL 25, 1996

8:07 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.; John Hanna, R.Ph.; Wayne Miller, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

The Board continued their review of correspondence and reports not requiring formal action.

RES. 96-217 Following discussion, Mrs. Plant moved that Resolution 95-83 be amended and adopted as follows:

PROCEDURE FOR CHANGES IN DRUG DISTRIBUTOR LICENSURE

(As adopted 03/24/83 and amended 04/25/96)

<u>Conditions</u>	<u>New Lic¹</u>	<u>New ID#</u>	<u>New Fee</u>	<u>Dis Bus</u>	<u>New App</u>	<u>New Add</u>
CHANGE OF OWNERSHIP						
Limited Liability Company ^A	R	R	R	R	R	
Sole Proprietorship	R	R	R	R	R	
Corporate						
existing corp. ceases-new corp.	R	R	R	R	R	
existing corp. continues-						
100% of stock purchased by another corp.	R	N	R	N	R	
controlling interest purchased by indiv. or another business ^B	R	N	R	N	R	
two wholly-owned subsidiaries of parent corp. are merged with no change in name, officers, or responsible R.Ph.s ^C	R	N	R	N	R	
new corp. created to own and operate sites with no change in dba or responsible R.Ph.s ^D	R	N	R	N	R	
CHANGE OF NAME - dba	R	N	R	N	R	
CHANGE OF ADDRESS^E	R	N	R	N	R	
CHANGE OF CATEGORY (any distributor or satellite)	R	N	R	N	R	
EMERGENCY MEDICAL SYSTEMS						
Add units (HQ / satellites)	Y/N	N	R	N	N	Y/N
Add satellites	R ²	N	R	N	N	R ⁴
Add/delete drugs; no change in category (new protocol; new addendums)	N	N	N	N	N	R
Changes name of headquarters	R	N	R	N	R	R
Changes name of satellite	R ³	N	R	N	N	R ⁴
Changes address of satellite	R ³	N	R	N	N	R ⁴
Changes protocol (no change in drugs)	N	N	N	N	N	N
Changes address of headquarters	R ⁵	N	R	N	R	R ⁵
	R-Required		Y-Yes		N-No	

A--Added 04/25/96 By Resolution

1--If new license issued, old license

B--Controlling Interest = 15% or more of
the stock in a corp.
C--Added 10/15/83 By Resolution
D--Added 12/02/86 By Resolution
E--Requires inspection of new location

must be returned
2--For new satellite(s)
3--For satellite
4--For satellite & headquarters
5--All

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

RES. 96-218 The Board then discussed the response of Phar-Mor's counsel regarding the fact that their advertisements for prescription drug prices did not include all of the "price information" required by Division (B) of Section 4729.36 of the Ohio Revised Code. Mr. Cavendish moved that the Board issue a cease and desist in view of their response dated April 10, 1996. The motion was seconded by Mr. Miller and approved (Aye-6/Nay-0).

8:40 a.m.

Board member Amonte Littlejohn arrived and the Board was joined by Assistant Attorney General Mary Hollern for the purpose of continuing the hearing in the matter of John Allen Dziech, R.Ph. (03-3-11853).

10:02 a.m.

The hearing was recessed, and the Board was joined by Ernie Boyd, Executive Director, and William Armbrrecht, President, of the Ohio Pharmacists Association. Items discussed included proposals to revise the Pharmacy Practice Act pending legislation. They were also notified that a representative from the Wal-Mart Corporation will be making a presentation to the Board at 1:00 p.m. regarding how their company has addressed the problem of dispensing errors.

10:45 a.m.

The discussion was concluded and the Board recessed for ten minutes.

10:55 a.m.

The hearing in the matter of R.Ph. John Allen Dziech (03-3-11853) was reconvened and the Board continued to receive evidence and hear testimony by witnesses.

12:50 p.m.

The hearing was concluded and the Board was joined by Wal-Mart representatives Bob Dufour, R.Ph. and John Colbert, R.Ph. Mr. Dufour presented a video and material regarding Wal-Mart's pro-active efforts to prevent dispensing errors and improve the ability of their pharmacists to counsel patients.

1:00 p.m.

Board member Joseph Maslak arrived to participate in the meeting.

1:35 p.m.

RES. 96-219 The presentation was concluded and the Board continued their business meeting. Board members Ruth Plant, Robert Cavendish, and Joseph Maslak left the room for personal business. The Board was joined by Mr. Benedict, Mr. Cole, and Mr. Winsley. Mr. Winsley presented drafts of proposed amendments to Ohio Administrative Code Rules 4729-5-01 and 4729-5-30. Following discussion, Mrs. Neuber moved that the Board propose to amend the rules as follows:

4729-5-01 Definitions.

As used in Chapter 4729. of the Revised Code:

- (A) To "practice pharmacy" is as defined in division (B) of section 4729.02 of the Revised Code.
- (B) The term "dispense" means the final association of a drug with a particular patient pursuant to the prescription, drug order, or other lawful order of a practitioner and the professional judgment of and the responsibility for: interpreting, preparing, compounding, labeling, and packaging a specific drug.
- (C) "Compound" means the professional judgment of a pharmacist associated with the measuring and mixing of one or more drugs, and also includes the reconstitution of a drug by the measuring and mixing of a diluent, pursuant to a prescription.
- (D) "Interpret prescriptions" means the professional judgment of a pharmacist when reviewing a prescription order of a practitioner for a patient.

- (E) "To participate in drug selection" means selecting and dispensing a drug product pursuant to sections 4729.38 and 4729.381 of the Revised Code.
- (F) "To participate with practitioners in reviews of drug utilization" means monitoring the appropriate use of drugs through communication with the practitioner(s) involved.
- (G) "Pharmacist" means an individual who holds a current pharmacist identification card pursuant to section 4729.08 or 4729.09 of the Revised Code; or, pursuant to section 4729.12 of the Revised Code and, where applicable, has met the continuing pharmacy education requirements in accordance with Chapter 4729-7 of the Administrative Code.
- (H) "Original prescription" means the prescription issued by the practitioner in writing, or an oral prescription recorded in writing by the pharmacist, or a prescription transmitted by use of a facsimile machine, each of which is pursuant to rule 4729-5-30 of the Administrative Code.
- (I) "Personal supervision" means a pharmacist shall be physically present in the pharmacy and provide personal review and approval of all professional pharmaceutical activities.
- (J) "Preprinted order" is defined as a patient-specific, definitive set of drug treatment directives to be administered to an individual patient who has been examined by a practitioner and for whom the practitioner has determined that the drug therapy is appropriate and safe when used pursuant to the conditions set forth in the preprinted order. Preprinted orders may be used only for inpatients in an institutional or health care facility as defined in Chapter 4729-17 of the Administrative Code.
- (K) "Standing order" will mean the same as the term "protocol".
- (L) "Protocol" is defined as:
 - (1) A definitive set of treatment guidelines that include definitive orders for drugs and their specified dosages which have been authorized by a practitioner as defined in rule 4729-5-15 of the Administrative Code and have been approved by the board of pharmacy to be used by certified or licensed health care professionals when providing limited medical services to individuals in an emergency situation when the services of a practitioner are not immediately available; or
 - (2) A definitive set of treatment guidelines that include definitive orders for drugs and their specified dosages which have been authorized by a practitioner as defined in rule 4729-5-15 of the Administrative Code and have been approved by the board of pharmacy to be used by certified or licensed health care professionals when administering biologicals or vaccines to individuals for the purpose of preventing diseases.

A protocol may be used only by licensed or certified individuals acting within the scope of their license or certification who have been adequately trained in the safe administration and use of the drugs and other procedures included in the protocol.

Protocols submitted for approval by the board of pharmacy may be reviewed with the medical and/or nursing board, as appropriate, prior to any approval by the board of pharmacy.

- (M) "PRESCRIBER" MEANS ANY PERSON AUTHORIZED BY THE REVISED CODE TO PRESCRIBE DANGEROUS DRUGS AS PART OF THEIR PROFESSIONAL PRACTICE.
- (N) "POSITIVE IDENTIFICATION" MEANS A METHOD OF IDENTIFYING AN INDIVIDUAL WHO PRESCRIBES, ADMINISTERS, OR DISPENSES A DANGEROUS DRUG. SUCH METHOD MAY INCLUDE A PASSWORD ACCESS TO A MECHANICAL OR AUTOMATED SYSTEM, BUT MUST ALSO INCLUDE A PHYSICAL MEANS OF IDENTIFICATION SUCH AS, BUT NOT LIMITED TO, THE FOLLOWING:
 - (1) A MANUAL SIGNATURE ON A HARD-COPY RECORD;
 - (2) A MAGNETIC CARD READER;

- (3) A BAR CODE READER;
- (4) A THUMBPRINT READER OR OTHER BIOMETRIC METHOD;
- (5) A DAILY PRINTOUT OF EVERY TRANSACTION THAT IS VERIFIED AND MANUALLY SIGNED WITHIN TWENTY-FOUR HOURS BY THE INDIVIDUAL WHO PRESCRIBED, ADMINISTERED, OR DISPENSED THE DANGEROUS DRUG. THE PRINTOUT MUST BE MAINTAINED FOR THREE YEARS AND MADE AVAILABLE ON REQUEST TO THOSE INDIVIDUALS AUTHORIZED BY LAW TO REVIEW SUCH RECORDS.

4729-5-30 Manner of issuance of prescription.

- (A) A prescription, to be effective, must be issued for a legitimate medical purpose by an individual practitioner or advanced practice nurse approved pursuant to section 4723.56 of the Revised Code acting in the usual course of his/her professional practice. The responsibility for the proper prescribing is upon the prescriber, but a corresponding responsibility rests with the pharmacist who dispenses the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription and the person knowingly dispensing such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law.
- (B) All prescriptions shall be dated as of and signed on the day when issued, and shall bear the full name and address of the patient.
- (C) All written prescriptions issued by a practitioner or advanced practice nurse approved pursuant to section 4723.56 of the Revised Code shall bear the full name and address of the prescriber and shall be manually signed by the prescriber in the same manner as he/she would sign a check or legal document.
- (D) An original signed prescription (for other than a schedule II controlled substance except as noted in rules 4729-17-09 and 4729-19-02 of the Administrative Code) may be transmitted as an "other means of communication" to a pharmacist by the use of a facsimile machine only by a practitioner, the practitioner's agent, or an advanced practice nurse approved pursuant to section 4723.56 of the Revised Code. Such a facsimile shall only be valid as a prescription if a system is in place that will allow the pharmacist to maintain the facsimile as a part of the prescription record including the positive identification of the practitioner and his/her agent or of the advanced practice nurse, as well as positive identification of the origin of the facsimile. The pharmacist must record the prescription in writing pursuant to section 4729.37 of the Revised Code or store the facsimile copy in such a manner that will allow retention of the prescription record for three years from the date of the last transaction. The original signed prescription from which the facsimile is produced shall not be issued to the patient. The original signed prescription must remain with the patient's records at the prescriber's office or the institutional facility where it was issued. A facsimile of a prescription received by a pharmacist in any manner other than transmission directly from the practitioner, the practitioner's agent, or the advanced practice nurse approved pursuant to section 4723.56 of the Revised Code shall not be considered a valid prescription, except as a copy of a prescription pursuant to rule 4729-5-24 of the Administrative Code.
- (E) All prescriptions shall specify the number of times or the period of time for which the prescription may be refilled. A prescription marked "Refill P.R.N." or some similar designation is not considered a valid refill authorization.
- (F) Prescriptions for dangerous drugs may not be dispensed for the first time beyond six months from the date of issuance by a practitioner or an advanced practice nurse approved pursuant to section 4723.56 of the Revised Code.
- (G) Prescriptions for dangerous drugs and controlled substances in schedule V may not be authorized for refill beyond one year from the date of issuance. Prescriptions for controlled substances in schedules III and IV shall be authorized for refill only as permitted by section

3719.05 of the Revised Code. Prescriptions for controlled substances in schedule II may not be refilled.

- (H) A prescription may be refilled only as expressly authorized by the practitioner or the advanced practice nurse approved pursuant to section 4723.56 of the Revised Code, either in writing or orally. If no such authorization is given, the prescription may not be refilled.
- (I) The drug(s) in a compounded prescription or drug product shall be identified by the product trade name or generic name.
- (J) No prescription shall be coded in such a manner that it cannot be dispensed by any pharmacy of the patient's choice. A "coded prescription" is one which bears letters, numbers, words or symbols, or any other device used in lieu of the name, quantity, strength and directions for its use, other than those normal letters, numbers, words, symbols, or other media recognized by the profession of pharmacy as a means of conveying information by prescription. No symbol, word, or any other device shall be used in lieu of the name of said preparation.
- (K) The agent of a practitioner who transfers a facsimile of an original prescription or transmits an oral prescription or authorization of a refill for a dangerous drug must identify themselves by full name and the pharmacist shall make a record of the practitioner's agent on the original prescription and, if used, on the alternate system of recordkeeping.
- (L) When forms are used that create multiple copies of a prescription issued to a patient by a practitioner or an advanced practice nurse approved pursuant to section 4723.56 of the Revised Code, the original ~~copy~~ PRESCRIPTION which ALSO bears the actual signature of the prescriber must be issued to the patient for dispensing by a pharmacist.
- (M) A PHARMACIST MAY ACCEPT, WITHOUT FURTHER VERIFICATION OF THE PRESCRIBER'S IDENTITY REQUIRED, A PRESCRIPTION THAT HAS BEEN TRANSMITTED BY MEANS OF A BOARD APPROVED AUTOMATED PAPERLESS SYSTEM ONLY WHEN THE ABILITY TO TRANSMIT PRESCRIPTIONS IS RESTRICTED TO THE PRESCRIBER. THE SYSTEM SHALL REQUIRE POSITIVE IDENTIFICATION OF THE PRESCRIBER AS DEFINED IN RULE 4729-5-01 OF THE ADMINISTRATIVE CODE.

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

Board member Robert Cavendish returned and joined the meeting.

- RES. 96-220** Mr. Benedict presented a request for a waiver from OAC Rule 4729-5-11. Mr. Miller moved that the Board approve R.Ph. Michael Warren's request to serve as the responsible pharmacist for both Gibsonburg Pharmacy (02-188800) and Gibsonburg Institutional Pharmacy (terminal distributor application pending). Mr. Miller moved that the request be approved and that he be permitted to serve as the responsible pharmacist for both terminal distributors for one year. The motion was seconded by Mr. Cavendish and approved (Aye-6/Nay-0).
- RES. 96-221** Board member Ruth Plant returned and joined the meeting. Mr. Littlejohn and Mr. Benedict presented a report on those pharmacists whose licenses are presently on probation. The Board directed staff to inform Errol Duronslet that the Order issued in his matter stands and will not be modified. The Board also directed that R.Ph. Patricia Flack appear before the Board at the June, 1996 meeting and that R.Ph. Peter Clouse be scheduled to appear before the Board at a future meeting since they have not complied with the probationary terms set forth by the Board in their Adjudication Orders.
- RES. 96-222** The Board then reviewed a request from "The Life Support Team" for clarification as to the type of license that they would need in order to obtain and possess dangerous drugs for use in providing emergency medical services to race tracks in the Mansfield area. Following discussion, the Board directed staff to inform the applicant that they do not meet the criteria for licensure as a terminal distributor of dangerous drugs.

2:38 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 Kessco Drugs pursuant to Revised Code Chapters 119. and 4729.

3:00 p.m.

RES. 96-223

The hearing was concluded and the record closed. Mrs. Neuber moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-950830-017)

In The Matter Of:

KESSCO DRUGS

c/o Leon D. Kessel, R.Ph.
952 Parsons Avenue
Columbus, Ohio 43206
(Terminal Distributor No. 02-108300)

INTRODUCTION

THE MATTER OF KESSCO DRUGS CAME ON FOR CONSIDERATION ON APRIL 25, 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.; 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.

LEON D. KESSEL WAS NOT PRESENT, NOR WAS KESSCO DRUGS 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) William T. Winsley, R.Ph., Ohio State Board of Pharmacy
- (2) Robert L. Cole, 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 2--Renewal Application for Pharmacist License, No. 03-1-08042, of Leon David Kessel for a license to practice pharmacy in Ohio from September 15, 1984, to September 15, 1985, received November 7, 1984.
- (3) Exhibit 3--Annual Pharmacist License Renewal for license period from September 15, 1994, to September 15, 1995, of Leon David Kessel, No. 03-1-08042, showing the date received as October 3, 1994.
- (4) Exhibit 4--Prescription number 1031907 and prescription number 1031911.
- (5) Exhibit 5--Prescription number 1031948 and prescription number 1031947.
- (6) Exhibit 6--Prescription number 1032038 and prescription number 1032045.
- (7) Exhibit 7--Prescription number 1032217 and prescription number 1032190.
- (8) Exhibit 8--Three prescriptions numbered as follows: 1032406, 1032430, and 1032429.
- (9) Exhibit 9--Prescription number 1032539 and prescription number 1032563.
- (10) Exhibit 10--Three prescriptions numbered as follows: 1032646, 1032654, and 1032653.

- (11) Exhibit 11--Prescription number 1032711.
- (12) Exhibit 12--Prescription number 1032831 and prescription number 1032805.
- (13) Exhibit 13--Handwritten statement of Leon D. Kessel signed and notarized on April 26, 1995.
- (14) Exhibit 14--Two-page Dangerous Drug Distributor Inspection Report of Kessco Drugs, Terminal Distributor License No. 02-108300, dated April 26, 1995.
- (15) Exhibit 15--Letter from Leon Kessel, response to pink sheet, received May 16, 1995.
- (16) Exhibit 16--Dangerous Drug Distributor Inspection Report of Dane Drug #7, Terminal Distributor License No. 02-108300, dated May 6, 1992.
- (17) Exhibit 17--Dangerous Drug Distributor Inspection Report of Dane Drug #7, Terminal Distributor License No. 02-108300, dated October 26, 1990.
- (18) Exhibit 19--Two-page Dangerous Drug Distributor Inspection Report of Dane Drug #7, Terminal Distributor License No. 02-108300, dated May 2, 1990.
- (19) Exhibit 20--Letter from Leon Kessel, response to pink sheet, dated May 9, 1990.
- (20) Exhibit 21--Dangerous Drug Distributor Inspection Report of Dane Drug #7, Terminal Distributor License No. 02-108300, dated September 7, 1989.
- (21) Exhibit 22--Response to pink sheet from L. D. Kessel, received September 25, 1989.
- (22) Exhibit 23--Twelve D. E. A. 222 forms of Kessco, Inc. numbered as follows: 941072719, 941072720, 941072721, 941072724, 941072725, 941072726, 941072727, 941072728, 950194460, 950194461, 950194462, and 950194466.
- (23) Exhibit 24--Narcotic and Poison Register of Kessco Drugs dated from August 17, 1987, through April 26, 1995.
- (24) Exhibit 25--Two-page letter from Leon Kessel dated April 15, 1979; with attached example of patient profile.
- (25) Exhibit 26--Two-page letter from Franklin Z. Wickham dated November 15, 1979.

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, Kessco Drugs 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 return receipt of August 31, 1995, Kessco Drugs received the letter of August 30, 1995, informing it of the allegations against it, and its rights.
- (3) Kessco Drugs 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 Leon K. Kessel is the Responsible Pharmacist at Kessco Drugs pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (5) Kessco Drugs did, on or about the following dates, fail to have in its employ and in full and actual charge of the pharmacy, a pharmacist registered under the laws of this state, to wit: the pharmacy listed Leon D. Kessel as its Responsible Pharmacist from September 16, 1984, through November 7, 1984, and from September 16, 1994, through October 3, 1994, when such individual had permitted his pharmacist license to lapse. Such conduct is in violation of Section 4729.27 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (6) Kessco Drugs did, from September 16, 1984, to November 7, 1984, and again from September 16, 1994, to October 3, 1994, aid and abet another, not a registered pharmacist or pharmacy intern, to dispense or sell dangerous drugs, to wit: Kessco Drugs permitted Leon D. Kessel to fill and refill prescriptions in the absence of a registered pharmacist. Such conduct is in violation of Section 2923.03 of the Ohio Revised Code as it relates to Section 4729.28 of the Ohio Revised Code.

- (7) Kessco Drugs did, from September 7, 1989, to April 26, 1995, after several written warnings by various Board agents, willfully and knowingly fail to maintain complete and accurate records of all controlled substances received or dispensed in compliance with federal laws and regulations and state laws and rules, to wit: during this time period Kessco Drugs committed the following violations:

- (a) Kessco Drugs failed to have its pharmacists manually initial prescriptions when dispensed in violation of Rule 4729-5-17 of the Ohio Administrative Code;
- (b) Kessco Drugs failed to record the date of receipt and the quantity received when purchasing schedule II controlled substances on the following D.E.A. 222 order forms in violation of Section 1305.09 of the Code of Federal Regulations:

<u>D.E.A. 222 Form No.</u>	<u>Date of Order</u>
941072719	01-31-95
941072720	03-02-95
941072721	03-02-95
941072724	02-17-95
941072725	02-17-95
941072726	[illegible]
941072727	02-20-95
941072728	02-07-95
950194460	03-18-95
950194461	04-07-95
950194462	04-12-95
950194466	03-28-95

- (c) Kessco Drugs failed to take and maintain a biennial inventory of controlled substances on two separate occasions during this time period in violation of Section 1304.13 of the Code of Federal Regulations and Section 3719.07 of the Ohio Revised Code;
- (d) Kessco Drugs failed to maintain a library containing a copy of current federal and state laws, regulations, and rules governing the legal distribution of drugs in Ohio in violation of Rule 4729-9-02 of the Ohio Administrative Code; and
- (e) Kessco Drugs failed to require its pharmacists to manually record their initials when making sales of exempt narcotics in violation of Section 1306.32 of the Code of Federal Regulations.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (5) 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.
- (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 violating a provision of Chapter 4729. as provided in Division (A)(3) 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 paragraph (7) of the Findings of Fact constitutes violating provisions of the federal narcotic law or Chapter 2925. or 3719. 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 foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby imposes a monetary penalty of one thousand dollars (\$1,000.00) due and owing within thirty days from the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the

enclosed form to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.

Pursuant to paragraph (C) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that Kessco Drugs' license is not in good standing and thereby denies the privilege of being a training site for pharmacy interns for two years, effective as of the date of the mailing of this Order.

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-3).

RES. 96-224 Mr. Winsley then presented the applications of the following in-state continuing pharmacy education providers for approval:

NEW	American Diabetes Association-Ohio Affiliate; Columbus
NEW	Drake Center, Inc.; Cincinnati
NEW	Pharmacy Systems, Inc.; Dublin

Following a review of the applications and the recommendations of the Continuing Pharmacy Education Advisory Council members, Mrs. Plant moved that the applicants be approved. The motion was seconded by Mrs. Neuber and approved (Aye-8/Nay-0).

3:12 p.m.

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting a hearing pursuant to Ohio Revised Code Chapters 119. and 4729. in the matter of R.Ph. Joseph Todd Fraker.

3:35 p.m.

The hearing was concluded and the record closed. Mrs. Plant moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony received during the hearings in the matters of R.Ph. Joseph Todd Fraker and John Allen Dziech, R.Ph. (03-3-11853). The motion was seconded by Mr. Maslak 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.

2:55 p.m.

RES. 96-225 The Executive Session was concluded and the meeting opened to the public. Mr. Miller moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-951103-025)

In The Matter Of:

JOSEPH TODD FRAKER, R.Ph.
2049 Scenic Drive, Apt. 5D
Lancaster, Ohio 43130
(R.Ph. No. 03-1-09289)

INTRODUCTION

THE MATTER OF JOSEPH TODD FRAKER CAME ON FOR CONSIDERATION ON APRIL 25, 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.; 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.

JOSEPH TODD FRAKER 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) Franklin Z. Wickham, R.Ph., Ohio State Board of Pharmacy
- (2) William Padgett, Ohio State Board of Pharmacy
- (3) 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 for Hearing letter dated November 3, 1995.
- (2) Exhibit 1A--Amendment/Addendum Notice and Notice of Opportunity for Hearing letter dated January 22, 1996.
- (3) Exhibit 1B--Hearing Request letter dated February 16, 1996.
- (4) Exhibit 1C--Hearing Schedule letter dated February 23, 1996.
- (5) Exhibit 1D--Letter from Joseph T. Fraker dated March 18, 1996.
- (6) Exhibit 1E--Pharmacist File Front Sheet of Joseph Todd Fraker showing original date of registration as August 4, 1969; and Renewal Application for Pharmacist License, No. 03-1-09289, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, dated July 25, 1995.
- (7) Exhibit 1F--Order of the Ohio State Board of Pharmacy, Docket No. D-881005-013, of Joseph Todd Fraker, R.Ph. dated March 7, 1989.
- (8) Exhibit 2--Five-page copy of statement of Joseph Todd Fraker dated November 2, 1995, and attached copy of worksheet of Joseph Todd Fraker dated November 2, 1995.
- (9) Exhibit 3--Copy of urine drug screen report of Todd Fraker dated April 21, 1995.
- (10) Exhibit 6--Seventy-one still shot photos from video tape made at Revco, Terminal Distributor License No. 02-155750, dated from October 27, 1995, through November 1, 1995.
- (11) Exhibit 7--Ohio State Board of Pharmacy, Drug Audit Accountability Sheet of Revco, Terminal Distributor License No. 02-155750, for Hydromet dated October 27, 1995.
- (12) Exhibit 8--Ohio State Board of Pharmacy, Drug Audit Accountability Sheet of Revco, Terminal Distributor License No. 02-155750, for Codimal DH dated October 31, 1995.
- (13) Exhibit 9--Ohio State Board of Pharmacy, Drug Audit Accountability Sheet of Revco, Terminal Distributor License No. 02-155750, for Codiclear DH dated October 31, 1995.
- (14) Exhibit 10--Ohio State Board of Pharmacy, Drug Audit Accountability Sheet of Revco, Terminal Distributor License No. 02-155750, for Chemdal DH dated October 31, 1995.
- (15) Exhibit 11--Ohio State Board of Pharmacy, Drug Audit Accountability Sheet of Revco, Terminal Distributor License No. 02-155750, for Hycodan dated October 31, 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 November 3, 1995, Joseph Todd Fraker 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 November 4, 1995, Joseph Todd Fraker received the letter of November 3, 1995, informing him of the allegations against him, and his rights.
- (3) Joseph Todd Fraker requested a hearing and a hearing was scheduled in accordance with Chapter 119. of the Ohio Revised Code. However, pursuant to correspondence from Joseph Todd Fraker dated March 18, 1996, Mr. Fraker withdrew his request for a hearing.
- (4) Records of the Board indicate that Joseph Todd Fraker was originally licensed to practice pharmacy in Ohio on August 4, 1969, and on November 3, 1995, Joseph Todd Fraker's license was summarily suspended in accordance with Divisions (A) and (B) of Section 3719.121 of the Ohio Revised Code.
- (5) Joseph Todd Fraker 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: Joseph Todd Fraker's license to practice pharmacy was placed on probation in March of 1989 for theft of drugs and drug abuse; and, on November 2, 1995, Joseph Todd Fraker admitted to agents of the Ohio State Board of Pharmacy that he had "relapsed"; that he had contracted with a drug treatment facility and in May (*sic*) 1995 he tested positive for drugs of abuse when submitting to urinalysis; and, that each day Joseph Todd Fraker worked at Revco #499, from May 1995 through October 27, 1995, he stole Hydromet and/or Codimal syrups, schedule III controlled substances, for personal consumption while practicing pharmacy.
- (6) Joseph Todd Fraker did, on or about October 27, 1995, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Revco Drug #499, 620 Carroll Street, New Lexington, Ohio, beyond the express or implied consent of the owner, to wit: on this date Joseph Todd Fraker admittedly stole 240ml of Hydromet Syrup for his own personal abuse while practicing pharmacy. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (7) Joseph Todd Fraker did, from May 1, 1995, through October 31, 1995, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of another, beyond the express or implied consent of the owner, Revco #499, to wit: Joseph Todd Fraker stole the following schedule III controlled substances:

<u>Drug</u>	<u>Quantity</u>
Hydromet	11,890ml
Codimal DH	340ml
Codiclear DH	160ml
Chemdal DH	1060ml
Hycodan	1680ml

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

- (8) Joseph Todd Fraker did, from May 1, 1995, through October 31, 1995, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of another, beyond the express or implied consent of the owner, Revco #499, to wit: Joseph Todd Fraker admittedly stole 24 units of Lasix 40mg, a dangerous drug, for the purpose of diluting the concentration of controlled substances in his body for drug screens. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (9) Joseph Todd Fraker did, from May 1, 1995, through October 27, 1995, with purpose to deprive, knowingly obtain or exert control over the property of another beyond the express or implied consent of the owner, Revco #499, to wit: Joseph Todd Fraker admittedly stole reading glasses, phone cards, and other miscellaneous items while working as a pharmacist at Revco. 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 paragraphs (5) through (9) 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 (5) through (8) of the Findings of Fact constitute being addicted to or abusing 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.

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 November 3, 1995.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Joseph Todd Fraker:

- (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. 03-1-09289, held by Joseph Todd Fraker 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. 03-1-09289, held by Joseph Todd Fraker 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.

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

RES. 96-226 Mr. Hanna moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY (Docket No. D-950503-057)

In The Matter Of:

JOHN ALLEN DZIECH, R.Ph.
2155 Landman Mill Road
Piqua, Ohio 45356
(R.Ph. No. 03-3-11853)

INTRODUCTION

THE MATTER OF JOHN ALLEN DZIECH CAME TO HEARING ON APRIL 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.

JOHN ALLEN DZIECH WAS REPRESENTED BY RALPH E. BREITFELLER, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) David Henry, District Manager, Revco Loss Prevention
- (2) Max Myers, R.Ph., M & R Drugs
- (3) Gregory C. Berquist, formerly with the Regional Narcotics Unit
- (4) David Avery, Ohio State Board of Pharmacy
- (5) Jack P. Steinhilber, M.D.
- (6) Mary Steinhilber

Respondent's Witnesses:

- (1) Amy R. DeCamp, Ohio Adult Parole Authority, Miami County
- (2) John A. Dziech, Father of Respondent
- (3) John Allen Dziech, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity for Hearing letter dated May 3, 1995.
- (2) Exhibit 1A--Hearing Request letter dated May 30, 1995.
- (3) Exhibit 1B--Hearing Schedule letter dated June 1, 1995.
- (4) Exhibit 1C--Pharmacist File Front Sheet of John Allen Dziech showing original date of registration as August 4, 1976.
- (5) Exhibit 1D--Renewal Application for Pharmacist License, No. 03-3-11853, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996 of John Allen Dziech dated July 30, 1995.
- (6) Exhibit 1E--Hearing Schedule letter dated November 8, 1995.
- (7) Exhibit 2--Copy of three-page handwritten statement of John Dziech dated June 11, 1991, and attached copy of Promissory Note of John A. Dziech, Jr. dated June 11, 1991.
- (8) Exhibit 2A--Copy of payout receipt from Revco dated July 16, 1990, and copy of charge number 74974 from M & R. Drug Co., Inc. dated July 15, 1990.
- (9) Exhibit 2B--Copy of payout receipt from Revco dated July 15, 1990, and copy of charge number 74982 from M & R Drug Co., Inc. dated July 15, 1990.
- (10) Exhibit 2C--Copy of payout receipt from Revco dated April 25, 1991, and copy of charge number 86788 from M & R Drug Co., Inc. dated April 24, 1991.
- (11) Exhibit 2D--Copy of payout receipt from Revco dated May 2, 1991, and copy of charge number 86849 from M & R Drug Co., Inc. dated May 1, 1991.
- (12) Exhibit 2E--Copy of payout receipt from Revco dated May 3, 1991, and copy of charge number 86859 from M & R Drug Co., Inc. dated May 2, 1991.
- (13) Exhibit 2F--Copy of statement of Max A. Myers, R.Ph. signed and notarized on May 30, 1991.
- (14) Exhibit 2G--Copy of statement of Max A. Myers, R.Ph. signed and notarized on June 12, 1991.
- (15) Exhibit 3--Copy of Accountability Statement of Revco Pharmacy #402 for Synalgos-DC dated July 18, 1991, with the following attachments: Worksheet for Number Purchased dated July 18, 1991; Worksheet for Number Dispensed dated July 18, 1991; Closing Inventory dated July 18, 1991; and statement of R.Ph. Melvin L. Porcher, not dated.
- (16) Exhibit 3A--Copy of Revco Prescription Access Link of John Dziech dated June 11, 1991.
- (17) Exhibit 3B--Prescription number 0402-861812 dated November 17, 1990.
- (18) Exhibit 3C--Copy of Statement of Dr. Jack P. Steinhilber signed and notarized on June 28, 1991.
- (19) Exhibit 4--Copy of Accountability Statement of Revco Pharmacy #425 for Synalgos-DC dated July 18, 1991, with the following attachments: Worksheet for Number Purchased dated July 18, 1991; Worksheet for Number Dispensed dated July 18, 1991; Closing Inventory dated July 18, 1991; and copy of letter from Timothy J. Benedict dated July 11, 1991, with notation in red ink from Thom Baker, not dated.
- (20) Exhibit 5--Copy of Accountability Statement of M & R Drugs #8 for Synalgos DC dated July 26, 1991, with the following attachments: Worksheet for Number Purchased dated July 26, 1991;

Worksheet for Number Dispensed dated July 26, 1991; and Closing Inventory dated June 12, 1991.

- (21) Exhibit 6--Copy of Prescription number 0402-863160 dated December 1, 1990.
- (22) Exhibit 7--Copy of Revco Prescription Access Link of Rhett Dziech for three prescriptions numbered as follows: 0402-874299, 0402-875300, and 0402-859390.
- (23) Exhibit 8--Prescription number 0402-859390 dated October 23, 1990.
- (24) Exhibit 9--Four-page Entry in the Miami County Common Pleas Court, Case No. 93CR70, of J. Allen Dziech, Jr. dated May 6, 1993.
- (25) Exhibit 10--Sixty-six page transcribed deposition of Jack P. Steinhilber, M.D. taken on January 5, 1996.
- (26) Exhibit 11--Twenty-three page transcribed deposition of Mary Steinhilber taken on January 5, 1996.

Respondent's Exhibits:

- (1) Exhibit A--Affidavit of Yang Guu Chen, M.D. signed and notarized on October 10, 1995.
- (2) Exhibit B--Two-page Affidavit of Jack P. Steinhilber, M.D. signed and notarized on October 5, 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 of Pharmacy indicate that John Allen Dziech was originally licensed in the state of Ohio on August 4, 1976, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) John Allen Dziech did, during 1989, 1990, and 1991, with the purpose to deprive, knowingly obtain or exert control over the property of another, Revco Pharmacy #402 in Piqua, Ohio, by deception, to wit: John Allen Dziech created false records for payment to M & R Drugs #8 and admittedly stole \$64,935 in cash and \$3,660 in merchandise. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (3) John Allen Dziech did, from May 1, 1989, through June 12, 1991, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Revco Pharmacy #402 in Piqua, Ohio, beyond the express or implied consent of Revco, to wit: John Allen Dziech stole 1,572 unit doses of Synalgos-DC, a controlled substance (53% of the Synalgos-DC stock). Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) John Allen Dziech did, from April 29, 1989, through May 1, 1991, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Revco Pharmacy #425 in Piqua, Ohio, beyond the express or implied consent of Revco, to wit: John Allen Dziech stole 34 unit doses of Synalgos-DC, a controlled substance (45% of the Synalgos-DC stock). Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (5) John Allen Dziech did, from April 30, 1989, through June 28, 1991, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of M & R Drugs #8 in Piqua, Ohio, beyond the express or implied consent of M & R Drugs #8, to wit: John Allen Dziech stole 1,153 unit doses of Synalgos-DC, a controlled substance (92% of the Synalgos-DC stock). Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (6) John Allen Dziech was, on or about April 26, 1993, convicted in the Common Pleas Court of Miami County, Ohio, of one count of Tampering with Records in violation of Section 2913.42 of the Ohio Revised Code, a felony of the fourth degree. John Allen Dziech was fined \$1,000.00 and sentenced to a one-year term of probation in lieu of incarceration for one year.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (6) of the Findings of Fact constitute being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (6) 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.

ACTION OF THE BOARD

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

- (A) 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 suspends the pharmacist identification card, No. 03-3-11853, held by John Allen Dziech for three months, effective as of the date of the mailing of this Order.
- (B) 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 imposes a monetary penalty of five thousand dollars (\$5,000.00) due and owing within thirty days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.

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

RES. 96-227 The Board then elected the following officers for Fiscal Year 97:

President - Suzanne Neuber, R.Ph.
Vice-President - Amonte Littlejohn, R.Ph.

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

PER DIEM	<u>3/15</u>	<u>4/16</u>	<u>4/22</u>	<u>4/23</u>	<u>4/24</u>	<u>4/25</u>	<u>Total</u>
Cavendish	-	-	1	1	1	1	4
Hanna	-	-	1	1	1	1	4
Lamping	1	1	1	1	1	1	6
Littlejohn	-	-	-	1	1	1	3
Maslak	-	-	-	-	-	1	1
Miller	-	-	1	1	1	1	4
Neuber	-	-	-	1	1	1	3
Plant	-	1	1	1	1	1	5
Repke	-	-	1	1	1	1	4

4:48 p.m. The motion was seconded by Mr. Maslak and approved by the Board (Aye-8/Nay-0).

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***

/d/ ***6/27/96***

Paul F. Lamping,
President Date

/s/ ***Franklin Z. Wickham***

Franklin Z. Wickham, Executive Director

Minutes Of The Meeting
Ohio State Board of Pharmacy
Columbus, Ohio
June 11, 1996

TUESDAY, JUNE 11, 1996

10:50 a.m. ROLL CALL

The State Board of Pharmacy convened in Room 1933, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Suzanne L. Neuber, R.Ph. (Vice-President); Robert Cavendish, R.Ph.; Amonte Littlejohn, R.Ph.; Joseph Maslak, R.Ph.; and Wayne Miller, R.Ph.

The Board was joined by the following staff members: Tim Benedict, Compliance Administrator; Robert Cole, Compliance Supervisor; David Rowland, Legal Affairs Administrator; Elaine Jones, Compliance Specialist; and Compliance Agents Michael Cluxton and Lynn Mudra.

Mr. Miller moved that the Board go into Executive Session for the purpose of discussing the investigation of complaints and charges against licensees and registrants of the Board. The motion was seconded by Mr. Cavendish and a roll call vote was conducted presiding member Mrs. Neuber as follows: Cavendish-Yes, Littlejohn-Yes, Maslak-Yes, Miller-Yes, and Neuber-Yes.

11:20 a.m.

RES. 96-228 The Executive Session was concluded and the meeting opened to the public. Mr. Cavendish moved that the Board summarily suspend the license of R.Ph. Robert J. Dougherty (03-3-15779) 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. Miller and approved by the Board (Aye-5/Nay-0).

RES. 96-229 Mr. Littlejohn moved that the Board summarily suspend the license of R.Ph. William James Crane (03-3-16017) 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-5/Nay-0).

RES. 96-230 Mr. Miller moved that the Board summarily suspend the license of R.Ph. Anthony Savoca (03-1-07626) 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. Cavendish and approved by the Board (Aye-5/Nay-0).

RES. 96-231 Mrs. Neuber moved that the Board summarily suspend the license of R.Ph. David Allen Ansell (03-3-16760) 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. Maslak and approved by the Board (Aye-5/Nay-0).

RES. 96-232 Mr. Littlejohn moved that the Board summarily suspend the license of R.Ph. David Scott Herrmann (03-2-14021) 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. Cavendish and approved by the Board (Aye-5/Nay-0).

11:35 a.m.

Mr. Cavendish moved that the Board receive Per Diem for this meeting and that the meeting be adjourned. The motion was seconded by Mr. Littlejohn and approved (Aye-5/Nay-0).

/d/ **6/27/96**

Vice-President

/s/ **Suzanne L. Neuber**

Suzanne L. Neuber,
Date

Wickham

/s/ **Franklin Z.**
Franklin Z. Wickham, Executive Director