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Minutes Of The Meeting
Ohio State Board of Pharmacy
Columbus, Ohio
March 3, 4, 5, 6, 7, 1997

MONDAY, MARCH 3, 1997

10:12 a.m. ROLL CALL

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

Suzanne L. Neuber, R.Ph. (President); Diane Adelman, R.Ph.; Robert Cavendish, R.Ph.; Paul Lamping, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

Also present were Assistant Attorney General Mary Hollern, Compliance Administrator Tim Benedict, and Compliance Supervisor Robert Cole.

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 regarding licensees and registrants. The motion was seconded by Mr. Lamping and a roll call vote was conducted by President Neuber as follows: Adelman-Yes, Cavendish-Yes, Lamping-Yes, Plant-Yes, and Repke-Yes.

11:25 a.m.

RES. 97-116

The Executive Session was concluded and the meeting opened to the public. Mr. Lamping moved that the request for a continuance in the matter of Daniel T. Zachman, R.Ph. be denied and the 119. Hearing be conducted as scheduled on Wednesday, March 5, 1997 at 1:30 p.m. The motion was seconded by Mrs. Plant and approved (Aye-5/Nay-0).

11:30 a.m.

The Board recessed for lunch.

1:30 p.m.

The Board reconvened in Room 1914 for the purpose of continuing their business meeting with member Joseph Maslak present.

The 93rd Annual Meeting of the National Association of Boards of Pharmacy was discussed regarding attendance at the meeting and which members could serve as alternate delegates for voting purposes. The official delegate will be Suzanne Neuber, Board President, and the other Board members attending the meeting will serve as alternates in the event the President is not present for voting during the business sessions. Board members attending the meeting are Mr. Lamping, Mrs. Adelman, and Mr. Repke.

RES. 97-117

Mr. Lamping moved that the Board approve the attendance of the Board President, Public Member, and Executive Director at the 93rd Annual Meeting of the National Association of Boards of Pharmacy and that the President and Public Member be reimbursed for their

expenses pursuant to state law and Chapter 119. rules adopted by the Office of Budget and Management. The motion was seconded by Mr. Cavendish and approved (Aye-6/Nay-0).

2:00 p.m.

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting a disciplinary hearing pursuant to Ohio Revised Code Chapters 119. and 4729. in the matter of Kevin M. Riley, R.Ph., Kokomo, Indiana.

2:11 p.m.

RES. 97-118

The hearing was concluded and the Board continued their consideration of business agenda items. Material obtained from Wyeth-Ayerst regarding the de-scheduling of dexfenfluramine was discussed by the Board. Following discussion, the Board decided that they did not agree with the conclusions provided in the paper titled "Talking Points for DEA Administrator Thomas Constantine" and that they would not support the de-scheduling of the drug nor recommend that it be de-scheduled as soon as possible. This is due to the increasing number of reports being received from practicing pharmacists that the drug is not being prescribed as outlined in the official labeling approved by the Food and Drug Administration. Board members also voiced their concern about the increasing amount of dexfenfluramine being prescribed upon demand by patients for cosmetic purposes in view of the serious adverse effects of the drug.

RES. 97-119

Tim Benedict presented two requests that waivers be granted pursuant to Ohio Administrative Code Rule 4729-5-11. Registered Pharmacist Ted Barker requested that he be permitted to serve as the responsible pharmacist for the following two terminal distributors of dangerous drugs for six months:

Howard's Pharmacy (02-0083650)
Howard's Long Term Care Pharmacy (02-0612100)

Mr. Cavendish moved that the request be approved and that R.Ph. Ted Barker be permitted to serve as the responsible pharmacist for both of these terminal distributor licenses for six months. The motion was seconded by Mrs. Plant and approved (Aye-6/Nay-0).

RES. 97-120

Mrs. Plant moved that Michael D. Connell (03-1-10223) be approved to serve as the responsible pharmacist for the following terminal distributors of dangerous drugs for one year:

Parma Drug (02-0100350)
TDDD license pending for long term care pharmacy (not yet issued)

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

RES. 97-121

The Board then discussed the continuing abuse problem with carisprodol and butorphanol. Following discussion, the Board directed staff to take the necessary steps to place these two drugs into Schedule IV of Ohio's controlled substance schedules by Administrative Code rule as soon as possible.

RES. 97-122

An inquiry by e-mail regarding whether or not the submission of change of employment notices by e-mail is acceptable was presented to the Board for their consideration. Following discussion, the Board decided that it would not be acceptable at this time. The Board noted that it would be possible in the future with the development of new technology and electronic signatures.

RES. 97-123

The Anthem Prescription drug education proposal was presented to the Board for their consideration. Following discussion, the Board directed staff to inform Anthem that sufficient questions have been raised to warrant a representative from the company to appear before the Board in April. The Board also asked that additional information be provided in the form of flow charts, decision trees, sample forms, and examples of interventions.

RES. 97-124 Mr. Winsley joined the meeting and presented the results of the January 1997 licensure examinations. Following discussion, Mrs. Plant moved that the names of the successful candidates be memorialized in these Minutes:

Cynthia P. Arnold; Columbus, OH	03-3-22152
Jason A. Backel; Weirton, WV	03-3-22148
Michael Lee Baker; Strongsville, OH	03-3-22170
Ai-Hsueh Anne Marie Beyman; Canton, OH	03-3-21689
Jennifer Rebecca Bohnert; Urbana, OH	03-3-21172
David Scott Brandner; Hamilton, OH	03-3-21917
Sharon Ann Burris; Ada, OH	03-3-22153
Bachvan Thi Cao; Columbus, OH	03-3-21763
Joanne Chung-Yan Chan; Columbus, OH	03-3-22128
Tri Ngoc Chau; Dayton, OH	03-3-22156
Eveline Chines; Cincinnati, OH	03-3-22123
Jennifer Lynn Clark; Columbus, OH	03-3-22149
Michael Christopher Coman; Youngstown, OH	03-3-22163
James Michael DiRenzo; Dublin, OH	03-3-22151
Chirine M. El-Kerdi; Columbus, OH	03-3-21555
Kelley Kerscher Engle; Stow, OH	03-3-22134
Phillip S. Folio; Toledo, OH	03-3-22096
Dennis Chad Foreman; Point Pleasant, WV	03-3-22103
Michelle Lynn Gerten; Columbus Grove, OH	03-3-22126
Jeffery David Givens; Findlay, OH	03-3-22145
Jennifer M. Gnadinger; Louisville, KY	03-3-22157
Michael Chris Goldstrohm; Canton, OH	03-3-21691
Shannan Marie Hay; Fostoria, OH	03-3-22150
Heidi Carmen Hefner; Springfield, OH	03-3-22166
David Dustin Hess; Thornville, OH	03-3-21989
Eric Shawn Hizer; Troy, OH	03-3-22141
Randall Adam Hyde; Wellington, OH	03-3-22167
Johanna Lynne Janicki; Columbus, OH	03-3-22168
Hoang Huy Le; Columbus, OH	03-3-22130
Susan Jill Martin; Westerville, OH	03-3-22138
John Patrick McKenna; Weirton, WV	03-3-22133
Andrew Michael McMullen; Marshallville, OH	03-3-22140
Gertrude O. Mkparu; North Canton, OH	03-3-21797
Lynn Michelle Molnar; Richmond Heights, OH	03-3-21647
Helen J. Moon; Brunswick, OH	03-3-22142
Brent Jason Mulholland; Columbus, OH	03-3-22104
Robert Carmine Myers; Columbus, OH	03-3-22159
Debra Lynn Nign; Dayton, OH	03-3-21795
Dana Lynn Osicki; Broadview Heights, OH	03-3-22147
Lee H. Pan; Cincinnati, OH	03-3-22129
Premal K. Patel; Reynoldsburg, OH	03-3-22127
James Scott Patton; Granville, OH	03-3-22165
Jerry Richard Powell; Urbana, OH	03-3-22125
Donna Rose; Columbus, OH	03-3-22144
Sahar Sarkis; Lakewood, OH	03-3-21978
Meri Slavica; Mentor-on-the-Lake, OH	03-3-22143
Genie Ann Sullivan; Canal Winchester, OH	03-3-22118
Lee Ann Turner; Toledo, OH	03-3-22115
Nino Kristie Voskuhl; Dayton, OH	03-3-22154
Lawrence Gordon Voss; Riverview, FL	03-3-22131
Tad A. Williams; Sylvania, OH	03-3-22093
Celia Wang Yang; Bellbrook, OH	03-3-22094

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

3:45 p.m.

Mrs. Plant moved that the Board go into Executive Session for the purpose of considering the evidence and testimony received during the 119. hearing in the matter of Kevin M. Riley, R.Ph.

President Neuber conducted a roll call vote as follows: Adelman-Yes, Cavendish-Yes, Lamping-Yes, Maslak-Yes, Plant-Yes, and Repke-Yes.

3:50 p.m.
RES. 97-125

The Executive Session was concluded and the meeting opened to the public. Mrs. Plant moved the Board deny Kevin M. Riley's petition for reinstatement of his license to practice pharmacy in Ohio and adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-960507-059)

In The Matter Of:

KEVIN M. RILEY, R.Ph.
1729 S. Washington Street
Kokomo, Indiana 46902
(R.Ph. No. 03-3-18795)

INTRODUCTION

THE MATTER OF KEVIN M. RILEY CAME TO HEARING ON MARCH 3, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

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

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

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

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Hearing Request letter from Kevin M. Riley dated May 1, 1996.
- (2) Exhibit 1A--Hearing Schedule letter dated May 7, 1996, and copy of Ohio State Board of Pharmacy change of address form.
- (3) Exhibit 1B--Hearing Schedule letter dated June 26, 1996.
- (4) Exhibit 2--Four-page Order of the State Board of Pharmacy, Docket No. D-950613-066, in the matter of Kevin M. Riley

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 March 15, 1996, Kevin M. Riley was notified regarding the status of his license to practice pharmacy in the state of Ohio by Order pursuant to Section 4729.16 of the

Ohio Revised Code. The Order, Docket No. D-950613-066, indefinitely suspended the license of Kevin M. Riley. Further, Kevin M. Riley was to petition the Board for reinstatement to determine whether or not his license would be reinstated and, if so, under what conditions.

- (2) Kevin M. Riley requested a hearing on or about May 1, 1996, and a hearing was scheduled by letter dated May 7, 1996, in accordance with Chapter 119. of the Ohio Revised Code; however, the hearing was rescheduled by the Board to be held March 3, 1997, in accordance with Chapter 119. of the Ohio Revised Code by letter dated June 26, 1996.
- (3) As demonstrated by return receipt of June 29, 1996, Kevin M. Riley received the letter of June 26, 1996, informing him of the date of his hearing.
- (4) Kevin Riley and/or his wife responded three times by telephone on March 3, 1996; and the hearing was held.
- (5) Kevin M. Riley did not appear before the Board, and did not provide evidence to convince the Board that his license to practice pharmacy in the state of Ohio should be reinstated.

CONCLUSION OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the Findings of Fact constitute that Kevin M. Riley does not qualify for reinstatement.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and on the basis of the foregoing Findings of Fact and Conclusion of Law, the State Board of Pharmacy hereby denies the reinstatement of Kevin M. Riley's license, No. 03-3-18795, to practice pharmacy in Ohio.

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

MOTION CARRIED.

SO ORDERED.

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

3:52 p.m. The meeting was recessed until Tuesday, March 4, 1997, at 9:00 a.m.

TUESDAY, MARCH 4, 1997

9:12 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:

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

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting a disciplinary hearing pursuant to Ohio Revised Code Chapters 119. and 4729. in the matter of Jerome Friedman, R.Ph.; Columbus.

12:00 Noon

The hearing was concluded and the Board recessed the business meeting until 1:30 p.m.

1:00 p.m.

RES. 97-126

The Board, with Board member Robert Cavendish who arrived during the noon hour and without Board member John Hanna who left at lunchtime for business reasons, convened in Room 1919 for the purpose of meeting with the following reciprocity candidates:

AUXIER, ANDREW S.	03-3-22185	WEST VIRGINIA
CARON, PAULA J.	03-3-22220	KENTUCKY
DUNLAP, STACY A.	03-3-22190	MICHIGAN
LAMAN, STACY L.	03-3-22199	TENNESSEE
LOTTON, RAYNER B.	03-3-22200	SOUTH CAROLINA
MONROE, LEANNE M.	03-3-22216	WEST VIRGINIA
NEER, AMY R.	03-3-22184	WEST VIRGINIA
PETHICK, LAURA F	03-3-22188	COLORADO
SILL, MICHAEL S.	03-3-22206	IOWA
SNOWBERGER, JR., LARRY G.	03-3-22221	PENNSYLVANIA
THOMAS, STEPHEN E.	03-3-22187	IOWA
TOOLE, THOMAS K.	03-3-22198	INDIANA
UNDERWOOD, DEXTER L.	03-3-22195	WEST VIRGINIA
WAGNER, ROBERT F.	03-3-22146	IOWA
WILDI, DEBRA JO	03-3-22201	WEST VIRGINIA

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

2:06 p.m.

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing pursuant to Ohio Revised Code Chapters 119. and 4729. in the matter of Kenneth T. Cook, Aurora, Colorado.

3:25 p.m.

The hearing was concluded and the meeting recessed for five minutes.

3:33 p.m.

Mr. Lamping moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony submitted during the hearings in the matters of Jerome Friedman and Kenneth T. Cook. The motion was seconded by Mr. Maslak and a roll call vote was conducted by President Neuber as follows: Adelman-Yes, Cavendish-Yes, Lamping-Yes, Littlejohn-Yes, Maslak-Yes, Plant-Yes, and Repke-Yes.

4:20 p.m.

RES. 97-127

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

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-960814-005)

In The Matter Of:

JEROME FRIEDMAN, R.Ph.

3115 East Broad Street
Columbus, Ohio 43209
(R.Ph. No. 03-1-09439)

INTRODUCTION

THE MATTER OF JEROME FRIEDMAN CAME TO HEARING ON MARCH 4, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JEROME FRIEDMAN WAS REPRESENTED BY MARK SENFF, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Jean Shea (asserted Fifth Amendment privilege)
- (2) Christopher K. Reed, Ohio State Board of Pharmacy
- (3) Jerome Friedman, Respondent

Respondent's Witnesses:

- (1) Ronald Cohen
- (2) Dale Lucas

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity for Hearing letter dated August 14, 1996.
- (2) Exhibit 1A--Hearing Request letter dated August 20, 1996.
- (3) Exhibit 1B--Hearing Schedule letter dated August 22, 1996.
- (4) Exhibit 1C--Pharmacist File Front Sheet of Jerome Friedman showing original date of registration as February 25, 1970; and Renewal Application for Pharmacist License, No. 03-1-09439, for a license to practice pharmacy in Ohio from September 15, 1996, to September 15, 1997, of Jerome Friedman dated July 1, 1996.
- (5) Exhibit 1D--Two-page Application for Registration as a Terminal Distributor of Dangerous Drugs of Westland Medical Pharmacy dated November 27, 1982; five Renewal Applications for DDD License, No. 02-160250, for a Terminal Distributor of Dangerous Drugs License of Westland Medical Pharmacy for the following years: 1992, 1993, 1994, 1995, and 1996; and Written Notice of Discontinuing Business form of Westland Medical Pharmacy dated March 18, 1996.
- (6) Exhibit 2--Three-page Dangerous Drug Distributor Inspection Report of Westland Medical Pharmacy dated July 26, 1995.
- (7) Exhibit 3--Three-page Dangerous Drug Distributor Inspection Report Pink Sheet Response of Westland Medical Pharmacy, response not dated.
- (8) Exhibit 4--Typewritten resignation, not dated and not signed.
- (9) Exhibit 5--Dangerous Drug Distributor Inspection Report of Westland Medical Pharmacy dated October 13, 1995.
- (10) Exhibit 6--Dangerous Drug Distributor Inspection Report, Pink Sheet Response of Westland Medical Pharmacy, response not dated.
- (11) Exhibit 7--Accountability Statement of Westland Medical Pharmacy for Methylphenidate 10mg dated July 26, 1995.
- (12) Exhibit 8--Westland Medical Pharmacy Worksheet for Methylphenidate 10mg dated from July 27, 1993, to July, 1995.
- (13) Exhibit 9--Accountability Statement of Westland Medical Pharmacy for Phentermine HCl 37.5mg dated July 26, 1995.
- (14) Exhibit 10--Westland Medical Pharmacy Worksheet for Phentermine HCl 37.5mg dated from July 27, 1993, to July, 1995.
- (15) Exhibit 11--Accountability Statement of Westland Medical Pharmacy for Diethylpropion HCl 75mg dated July 26, 1995.
- (16) Exhibit 12--Westland Medical Pharmacy Worksheet for Diethylpropion HCl 75mg dated from July 27, 1993, to July, 95.
- (17) Exhibit 13--Accountability Statement of Westland Medical Pharmacy for Phentermine HCl 30mg (Blue) dated July 26, 1995.
- (18) Exhibit 14--Westland Medical Pharmacy Worksheet for Phentermine HCl 30mg (Blue) dated from July 27, 1993, to July, 1995.
- (19) Exhibit 15--Statement of Jerome Friedman signed and notarized on September 19, 1995.
- (20) Exhibit 16--Sixteen-page copy of Westland Medical Pharmacy Event History Display dated from February 4, 1994, through October 13, 1995.

Respondent's Exhibits:

- (1) Exhibit A--Letter from Evonne Woods Evans dated February 21, 1997.
- (2) Exhibit B--Letter from Susan Rosser dated February 21, 1997.
- (3) Exhibit C--Letter from Joe Shamhart dated February 21, 1997.
- (4) Exhibit D--Copy of letter from Betty Jane Nichol dated February 26, 1997.
- (5) Exhibit E--Copy of letter from Joseph Nichol dated February 26, 1997.
- (6) Exhibit F--Copy of letter from Harley D. Greene dated February 26, 1997.
- (7) Exhibit G--Letter from Bryan N. Feldman dated February 24, 1997.
- (8) Exhibit H--Letter from Elliott P. Feldman dated February 21, 1997.
- (9) Exhibit I--Letter from Kathleen R. Martin dated February 18, 1997.
- (10) Exhibit J--Copy of letter from Robert J. Hirsh dated February 24, 1997.
- (11) Exhibit K--Letter from John Petrie dated February 15, 1997.
- (12) Exhibit L--Letter from A. C. Strip dated February 19, 1997.
- (13) Exhibit M--Copy of letter from Ernest E. Boyd dated February 25, 1997.

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 Jerome Friedman was originally licensed in the state of Ohio on February 25, 1970, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that, during the relevant time periods alleged herein, Jerome Friedman was the Responsible Pharmacist at Westland Medical Pharmacy pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-16 of the Ohio Administrative Code.
- (2) Jerome Friedman did, on or about July 26, 1995, and dates immediately preceding, permit persons other than a registered pharmacist to possess keys to a pharmacy which is not secured by a physical barricade when personal supervision of the dangerous drug stock was not provided, to wit: Jerome Friedman allowed Jean Shea, a pharmacy employee but not a registered pharmacist, and William Foster, the pharmacy's janitor, to possess keys and the alarm access codes to the pharmacy. Such conduct is in violation of Rule 4729-9-05 of the Ohio Administrative Code and Section 4729.27 of the Ohio Revised Code.
- (3) Jerome Friedman did, on or about July 27, 1995, and dates subsequent thereto, permit persons other than a registered pharmacist to possess keys to a pharmacy which is not secured by a physical barricade when personal supervision of the dangerous drug stock was not provided, to wit: after being directed by a Board agent to collect the keys to the pharmacy from non-registered personnel, Jerome Friedman took a key from Jean Shea, a pharmacy employee but not a registered pharmacist, and Mr. Friedman immediately returned the key to her, so as to allow her to again possess a key and the alarm access codes to the pharmacy. Such conduct is in violation of Rule 4729-9-05 of the Ohio Administrative Code and Section 4729.27 of the Ohio Revised Code.
- (4) Jerome Friedman did, on or about October 12, 1995, and dates immediately preceding, permit persons other than a registered pharmacist to possess keys to a pharmacy which is not secured by a physical barricade when personal supervision of the dangerous drug stock was not provided, to wit: after having been previously warned against such conduct by Board agents, Jerome Friedman allowed Cindy Evans, a pharmacy technician and not a registered pharmacist, and Andrew Feldman, the business manager of a physician's office located within the same building as the pharmacy and not a registered pharmacist, to possess keys and alarm access codes to the pharmacy. Such conduct is in violation of Rule 4729-9-05 of the Ohio Administrative Code and Section 4729.27 of the Ohio Revised Code.
- (5) Jerome Friedman as the Responsible Pharmacist did, from July 27, 1993, through July 26, 1995, while acting as a category III terminal distributor of dangerous drugs, fail to

keep a record of all controlled substances received or dispensed, to wit: Jerome Friedman failed to keep records of the following drugs, purchased by Mr. Friedman and Westland Medical Pharmacy but unaccounted for on the final date of the Board audit:

<u>Drug</u>	<u>Qty.</u>	<u>% of Stock</u>
Methylphenidate 10mg	6,978 units	59.7 %
Phentermine HCl 37.5mg	4,757 units	46.9 %
Diethylpropion HCl 75mg	2,484 units	26.1 %
Phentermine HCl 30mg	1,985 units	24.6 %

Such conduct is in violation of Section 3719.07 of the Ohio Revised Code.

- (6) Jerome Friedman as the owner and Responsible Pharmacist did, from July 27, 1993, through July 26, 1995, fail to be personally in full and actual charge of Westland Medical Pharmacy or to have in his employ a registered pharmacist in full and actual charge of the pharmacy to wit: Jerome Friedman allowed non-registered individuals access to the pharmacy and Mr. Friedman failed to maintain adequate safeguards to prevent the sale or other distribution of dangerous drugs by persons other than registered pharmacists as required by Rules 4729-5-11, 4729-9-05, and 4729-9-11 of the Ohio Administrative Code. Such conduct is in violation of Section 4729.27 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 (6) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (6) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 3719. or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Jerome Friedman:

- (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. 03-1-09439, held by Jerome Friedman indefinitely and such suspension is effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Jerome Friedman 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.
 - (1) Two years after the effective date of this Order, the Board will reinstate Jerome Friedman's license to practice pharmacy in Ohio provided that he take and successfully complete the jurisprudence examination offered by the Board, prior to that date. If Jerome Friedman has not successfully completed the examination prior to two years from the effective date of this Order, his license will not be reinstated until this condition has been achieved.
 - (2) Further, upon reinstatement of Jerome Friedman's license, his identification card will be placed on probation for five years. The terms of probation are as follows:

- (a) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of pharmacy hereby declares that Jerome Friedman's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns.
- (b) Jerome Friedman may not serve as a responsible pharmacist.
- (c) Jerome Friedman must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (d) Jerome Friedman must abide by the rules of the Ohio State Board of Pharmacy.
- (e) Jerome Friedman must comply with the terms of this Order.

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

- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of five 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 Revised Code provides that: "Any individual whose identification card is revoked, suspended, or refused, shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of the notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mrs. Plant and approved by the Board (Aye-5/Nay-1). Mr. Cavendish did not participate in the consideration of this matter nor vote since he was not present during the hearing.

RES. 97-128 Mrs. Plant moved that the Board deny the application of Kenneth T. Cook for licensure as an Ohio Pharmacist by examination and adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-950602-065)

In The Matter Of:

KENNETH T. COOK
1693 B South Blackhawk Way
Aurora, Colorado 80012
(D.O.B. 6/28/36)

INTRODUCTION

THE MATTER OF KENNETH T. COOK CAME TO HEARING ON MARCH 4, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN,

R.Ph.; ROBERT B. CAVENDISH, R.Ph; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

KENNETH T. COOK WAS REPRESENTED BY TERRY TATARU, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Christopher K. Reed, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Kenneth T. Cook, Respondent
- (2) Mark Cook, Son of Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter dated June 2, 1995.
- (2) Exhibit 1A--Copy of Hearing Request letter dated June 21, 1995, and attached copy of *Oath of a Pharmacist*, author unknown.
- (3) Exhibit 1B--Hearing Schedule letter dated September 5, 1995.
- (4) Exhibit 1C--Continuance Request letter dated December 16, 1995.
- (5) Exhibit 1D--Hearing Schedule letter dated December 15, 1995.
- (6) Exhibit 1E--Continuance Request letter dated March 12, 1996.
- (7) Exhibit 1F--Hearing Schedule letter dated March 21, 1996.
- (8) Exhibit 1G--Letter of Representation and Continuance Request letter of Terry Tataru dated September 19, 1996.
- (9) Exhibit 1H--Hearing Schedule letter dated September 24, 1996.
- (10) Exhibit 2--Application for Examination as a Pharmacist of Kenneth T. Cook signed and notarized on May 25, 1995, copy of Employer's Affidavit of Kenneth Thomas Cook signed and notarized on March 17, 1961; and copy of Application for Examination as Pharmacist of Kenneth Thomas Cook dated June, 1962.
- (11) Exhibit 3--Ohio State Board of Pharmacy Journal Entry, No. J-881221-082, of four-page Order of the State Board of Pharmacy in the matter of Kenneth T. Cook effective December 21, 1988.
- (12) Exhibit 4--Three-page Notice of Opportunity letter dated May 16, 1989.
- (13) Exhibit 5--Ohio State Board of Pharmacy Record of the Proceedings for Fiscal Year 1990, Page No. 65, dated September 26, 1989.
- (14) Exhibit 6--Ohio State Board of Pharmacy Journal Entry, No. J-900821-060, of four-page Order of the State Board of Pharmacy in the matter of Kenneth Thomas Cook effective August 21, 1990.
- (15) Exhibit 7--Ohio State Board of Pharmacy Journal Entry, No. J-930813-033, of four-page Order of the State Board of Pharmacy in the matter of Kenneth T. Cook effective August 13, 1993.

Respondent's Exhibits:

- (1) Exhibit A--Copy of three-page Stipulation and Order before the Colorado State Board of Pharmacy, Proceeding No. RG PH DLFJR, in the matter of Kenneth T. Cook dated May 7, 1990.
- (2) Exhibit B--Copy of letter from D. L. Simmons dated July 24, 1990.
- (3) Exhibit C--Employment History of Kenneth T. Cook dated from July 1990, to present.
- (4) Exhibit D--Two-page copy of Application to Expunge Record of Conviction in the Common Pleas Court of Cuyahoga County, Ohio of Kenneth T. Cook filed February 14, 1997; and attached copy of Affidavit of Kenneth T. Cook, not dated.

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 or about June 2, 1995, Kenneth T. Cook submitted an application for examination as a pharmacist; however, Kenneth T. Cook was originally licensed as a registered pharmacist in the state of Ohio on August 20, 1962, but the license was revoked effective December 21, 1988.
- (2) On or about December 21, 1988, the Ohio State Board of Pharmacy found the following to be fact:
 - (a) Kenneth T. Cook was the responsible pharmacist at Jax Drug Store, 3360 Linden Road, Rocky River, Ohio 44116, terminal distributor license number 02-527100, since November 17, 1987, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code.
 - (b) Kenneth T. Cook was, on or about May 16, 1988, in the Common Pleas Court of Cuyahoga County, convicted of Theft of Drugs in violation of Section 2925.21 of the Ohio Revised Code, a felony of the fourth degree, and Trafficking in Drugs in violation of Section 2925.03(A)(6) of the Ohio Revised Code, a felony of the third degree.
 - (c) Kenneth T. Cook did, on or about February 2, 1988, while practicing pharmacy at Jax Drug Store, 3360 Linden Road, Rocky River, Ohio 44116, obtain the following dangerous drugs by attempting or committing a theft offense as defined in Section 2913.01 of the Ohio Revised Code:

<u>Drug</u>	<u>Quantity</u>	<u>Schedule</u>
Fastin 30mg	61	IV
lonamin 30mg	29	IV
Tenuate Dospan 75mg	33	IV
Valium 10mg	152	IV
Tylenol #4 w/Codeine	29	III
Provera 10mg	30	DD

Such conduct is prohibited by Section 2925.21 of the Ohio Revised Code.

- (d) Kenneth T. Cook did, between November 17, 1987, and February 2, 1988, knowingly possess a controlled substance, to wit: Valium 10mg, a schedule IV controlled substance, in an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Ohio Revised Code when his conduct was not in accordance with Chapter 4729. of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(6) of the Ohio Revised Code.
- (e) Kenneth T. Cook as the responsible pharmacist did, between November 17, 1987, and February 2, 1988, fail to keep records of all controlled substances received or dispensed by Jax Drug Store, 3360 Linden Road, Rocky River, Ohio 44116, in accordance with 3719.07(G)(2) of the Ohio Revised Code.

The Board concluded that Kenneth T. Cook was guilty of a felony; guilty of gross immorality; guilty of dishonesty and unprofessional conduct in the practice of pharmacy; and guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violations of Chapters 2925., 3719., and 4729. of the Revised Code; and the Board revoked Kenneth T. Cook's identification card, No. 03-3-07755, on December 21, 1988.

- (3) Since the revocation of his license to practice pharmacy in Ohio, Kenneth T. Cook has made application for re-examination on three separate occasions. On or about May 16, 1989, the Board proposed to deny Kenneth T. Cook's first application for re-examination, and the application was later withdrawn. On or about August 21, 1990, Kenneth T. Cook's second application for re-examination was denied; and on August 13, 1993, Kenneth T. Cook's third application for re-examination was denied.

CONCLUSIONS OF LAW

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

ACTION OF THE BOARD

Pursuant to Section 4729.08 of the Ohio Revised Code, and on the basis of the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby denies the issuance of a certificate of registration or an identification card, and therefore denies the Application for Examination as a Pharmacist submitted by Kenneth T. Cook.

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Repke and approved (Aye-4/Nay-2/Abstain-1[Maslak]).

The Executive Director reported that Medicine-On-Time still had not provided a response to the Board's questions and concerns as of this date. The president of the company, Mr. John D. Kalvelage, indicated during a phone conversation following the January meeting that he would be providing the information requested before this meeting of the Board.

4:30 p.m. The Board recessed until Wednesday, March 5, 1997, at 8:00 a.m.

WEDNESDAY, MARCH 5, 1997

8:10 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:

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

8:16 a.m.

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing in the matter of Michael J. Kelley pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code.

9:19 a.m.

The hearing was concluded and the Board recessed until 9:30 a.m.

9:35 a.m.

The Board reconvened and Mr. Maslak moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony submitted during the hearing in the matter of Michael J. Kelley. The motion was seconded by Mr. Littlejohn and a roll call vote was conducted by President Neuber as follows: Adelman-Yes, Cavendish-Yes, Lamping-Yes, Littlejohn-Yes, Maslak-Yes, Plant-Yes, and Repke-Yes.

9:44 a.m.

RES. 97-129

The Executive Session was concluded and the meeting opened to the public. Mr. Maslak moved that the Board deny the application for examination as a pharmacist of Michael J. Kelley and adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-960814-007)

In The Matter Of:

MICHAEL J. KELLEY
6531 Hillfield St., N. W.
North Canton, Ohio 44720
(D.O.B. 4/4/54)

INTRODUCTION

THE MATTER OF MICHAEL J. KELLEY CAME TO HEARING ON MARCH 5, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

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

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Robert Cole, Ohio State Board of Pharmacy
- (2) Frederick Williams, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Michael J. Kelley, Respondent
- (2) Christy Kelley, Wife of Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity for Hearing letter dated August 14, 1996.
- (2) Exhibit 1A--Hearing Request letter dated August 31, 1996.

- (3) Exhibit 1B--Hearing Schedule letter dated September 5, 1996.
- (4) Exhibit 2--Application for Examination as a Pharmacist of Michael John Kelley signed and notarized on May 2, 1996; and attachment regarding Charges/Convictions.
- (5) Exhibit 3--Three-page Order of the State Board of Pharmacy, Docket No. 6-55-2, in the matter of Michael J. Kelley dated February 9, 1983.
- (6) Exhibit 4--Four-page Order of the State Board of Pharmacy, Docket No. D-890911-042, in the matter of Michael J. Kelley dated January 29, 1990.

Respondent's Exhibits:

- (1) Two-page Listing, Numbering and Explanation of Exhibits and two-page Notes on the Exhibits.
- (2) Exhibit 1--State Farm Insurance Companies Auto Renewal, Policy No. 720 2646-F24-35, of Michael J. Kelley prepared November 15, 1996.
- (3) Exhibit 2--Copy of letter from Rodger Rideout dated May 1, 1989.
- (4) Exhibit 3--Copy of letter from Mitchael Hennessey, not dated.
- (5) Exhibit 4--Two-page copy of Clark County Court of Common Pleas Judgment Entry of Conviction, Case No. 89-CR-99, of Michael Kelly (sic Kelley) dated August 22, 1989, and copy of Clark County Adult Probation Department Regulations of Probation of Michael J. Kelley dated August 16, 1989.
- (6) Exhibit 5--Copy of certificate from the Board of Registry, American Society of Clinical Pathologists of Michael J. Kelley dated August 16, 1991.
- (7) Exhibit 6--Copy of certificate from The National Certification Agency For Medical Laboratory Personnel of Michael J. Kelley dated August, 1995.
- (8) Exhibit 7--Copy of letter from Cheryl Benson dated August 1, 1990.
- (9) Exhibit 8--Copy of Clark County Court of Common Pleas Journal Entry, Case No. 89-CR-99, of Michael J. Kelley dated August 26, 1991.
- (10) Exhibit 9--Case Western Reserve University Transcript of Michael Kelley dated February 5, 1997.
- (11) Exhibit 10--Copy of Probate Court of Stark County, Ohio Entry Approving Report and Finalizing Adoption of Andrew Michael Kelley dated July 8, 1993.
- (12) Exhibit 11--Two-page copy of Clark County Common Pleas Court Entry Ordering Case Sealed and Records Expunged, Case No. 89-CR-99, of Michael J. Kelley filed June 15, 1995.
- (13) Exhibit 12--Copy of "A Long-term Follow-up of Male Alcohol Abuse" written by George E. Vaillant, M.D. from the *Archives of General Psychiatry*. 1996; 53:243-249.
- (14) Exhibit 13--Carbon copy prescription labels as follows: 528260C dated November 27, 1996, and 528261 dated November 27, 1996.
- (15) Exhibit 14--Gold Standard Multimedia, Inc. Invoice, No. INV21643, of Michael Kelley dated May 9, 1996.
- (16) Exhibit 15--Receipt from the OSU MED Bookstore dated May 9, 1996.
- (17) Exhibit 16--Banks Baldwin Law Publishing Company Invoice, No. 81757, of Michael Kelley dated May 8, 1996.
- (18) Exhibit 17--Curriculum Vitae of Michael J. Kelley dated from June 1978, through present.
- (19) Exhibit 18--Letter from Michael A. West and Valerie Bensinger dated September 1, 1996.
- (20) Exhibit 19--Letter from Valerie Bensinger dated May 16, 1996.
- (21) Exhibit 20--Copy of Akron General Medical Center Nursing Staff Development Schedule For Education Day dated May 8, 1996.
- (22) Exhibit 21--Three-page letter from Kathy L. Kelley dated May 29, 1996, and attached copy of Certificate of Baptism of Taylor Sierra Kelley dated May 5, 1996.
- (23) Exhibit 22--Letter from Mary M. Horvath dated February 1, 1997.
- (24) Exhibit 23--Letter from Dora Carrico dated February 1997.
- (25) Exhibit 24--Letter from Janet Young dated July 26, 1996.
- (26) Exhibit 25--Letter from Christy L. Kelley dated January 4, 1997.
- (27) Exhibit 26--Letter from Suzanne W. Conner dated May 9, 1996.
- (28) Exhibit 27--Letter from Valerie Bensinger dated September 12, 1996.
- (29) Exhibit 28--Letter from Michele A. Kelley dated February 28, 1997.
- (30) Exhibit 29--Summary of Michael J. Kelley's Appeal dated March 5, 1997.

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) Michael J. Kelley did, on or about May 7, 1996, submit an Application for Examination as a Pharmacist.
- (2) Records of the Board of Pharmacy indicate that Michael J. Kelley was originally licensed to practice pharmacy in the state of Ohio on August 9, 1978, pursuant to examination.
- (3) On February 9, 1983, the State Board of Pharmacy found the following to be fact:
 - (a) Michael J. Kelley did, between the dates of February 1, 1981, and February 19, 1982, knowingly obtain, possess, and use undetermined amounts of controlled substances, to wit: Ascriptin #3, Empirin #3, Empirin #4, Tylenol #3, and Percodan; in violation of Section 2925.11(A) of the Ohio Revised Code.
 - (b) Michael J. Kelley did, between the dates of February 1, 1982 (sic 1981), and February 19, 1982, obtain and exert control over dangerous drugs, to wit: Ascriptin #3, Empirin #3, Empirin #4, Tylenol #3, and Percodan, without the consent or beyond the scope of the consent given by the owner, People's Drug Store #201, 2103 East Tuscarawas Street, Canton, Ohio 44707; in violation of Section 2925.21(A) of the Revised Code.
 - (c) Michael J. Kelley did admit selling, within the meaning of Division (J) of Section 4729.02 of the Revised Code, a controlled substance, on different occasions, to several individuals, to wit: Percodan, a Schedule II controlled substance; in violation of Section 2925.03 of the Revised Code.
 - (d) Michael J. Kelley did, between the dates of February 1, 1981, and February 19, 1982, at People's Drug Store #201, 2103 East Tuscarawas Street, Canton, Ohio 44707, dispense dangerous drugs without a prescription issued by a practitioner, to wit: Ascriptin #3, Empirin #3, Empirin #4, Tylenol #3, and Percodan; in violation of the Federal Food, Drug, and Cosmetic Act, and Section 3715.64(A)(13)(b) of the Revised Code.

The Board concluded that Michael J. Kelley was guilty of acts that constituted gross immorality; guilty of willfully violating Section 2925. of the Revised Code; and guilty of willfully violating the Federal Food, Drug, and Cosmetic Act, and Section 3715.64(A)(13)(b) of the Revised Code. Michael J. Kelley's license was suspended for three 24-month periods to run concurrently; however, the Board suspended 21 months of each 24-month suspension period on the condition that Michael J. Kelley abide by the terms of probation set by the Board.

- (4) On January 29, 1990, the State Board of Pharmacy found the following to be fact:
 - (a) Michael J. Kelley was originally licensed to practice pharmacy in this state pursuant to examination on August 9, 1978.
 - (b) Michael J. Kelley was, on or about February 9, 1983, disciplined by the Board for acts constituting Drug Abuse, Theft of Drugs, Aggravated Trafficking in Drugs, and Dispensing Drugs Without a Prescription.
 - (c) Michael J. Kelley was, on or about August 16, 1989, convicted in the Common Pleas Court of Clark County, Ohio of Theft of Drugs in violation of Section 2925.21 of the Ohio Revised Code, a felony of the fourth degree.

- (d) Michael J. Kelley did, between January 1, 1988, and December 1, 1988, obtain dangerous drugs by committing a theft offense, to wit: Michael J. Kelley stole the following drugs from Brown Drugs, 1637 Selma Road, Springfield, Ohio:

<u>Drug</u>	<u>Schedule</u>	<u>Quantity</u>
Tylox	II	500 capsules
Tylenol #3	III	1000 tablets
Placidyl 750mg	IV	150 capsules
Placidyl 500mg	IV	100 capsules

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

The Board concluded that Michael J. Kelley was guilty of a felony and gross immorality; guilty of dishonesty and unprofessional conduct in the practice of pharmacy; and guilty of willfully violating provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Ohio Revised Code. As a result of this conduct, Michael J. Kelley's license was revoked.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (4)(c) of the Findings of Fact constitutes being convicted of a felony as provided in paragraph (A) of Rule 4729-5-04 of the Ohio Administrative Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (4)(c) of the Findings of Fact constitutes being convicted of violating any state or federal pharmacy or drug law as provided in paragraph (B) of Rule 4729-5-04 of the Ohio Administrative Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3)(a) through (3)(d) and (4)(b) through (4)(d) of the Findings of Fact constitute not being of good moral character and habits as provided in paragraph (A) of Rule 4729-5-04 of the Ohio Administrative Code and Division (B) of Section 4729.08 of the Ohio Revised Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3) and (4) of the Findings of Fact constitutes having been disciplined by the Ohio State Board of Pharmacy as provided in paragraph (F) of Section 4729-5-04 of the Ohio Administrative Code.

ACTION OF THE BOARD

Pursuant to Section 4729.08 of the Ohio Revised Code, and on the basis of the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby denies the issuance of a certificate of registration or an identification card, and therefore denies the Application for Examination as a Pharmacist submitted by Michael J. Kelley.

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

MOTION CARRIED.

SO ORDERED.

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

Nancy Little, Licensing Administrator for the Board, joined the meeting to answer questions regarding her monthly report.

RES. 97-130 Mr. Lamping moved that the Board approve the following five tuberculosis facilities pursuant to paragraph (E) of Ohio Administrative Code Rule 4729-5-10:

Erie County General Health District
New Philadelphia City Health Dept.
Lake County Health District
Clark County Tuberculosis Clinic
Jackson County Health Department

The motion was seconded by Mr. Maslak and approved (Aye-6/Nay-0/Abstain-1[Plant]).

Mr. Cavendish moved that the Minutes of the January 27, 28, 29, 30, 31, 1997 meeting be approved as amended. The motion was seconded by Mrs. Adelman and approved (Aye-7/Nay-0).

10:21 a.m.

The Board recessed until 1:30 p.m.

1:30 p.m.

The Board reconvened their business meeting without Board member Robert Cavendish and reviewed agenda items not requiring formal action by the Board.

1:41 p.m.

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing pursuant to the provisions of Ohio Revised Code Chapters 119. and 4729. in the matter of Daniel T. Zachman, R.Ph., Shelby, Ohio.

4:20 p.m.

The hearing was concluded and Mr. Maslak moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony presented during the hearing in the matter of Daniel T. Zachman, R.Ph. The motion was seconded by Mr. Lamping and a roll call vote was conducted by President Neuber as follows: Adelman-Yes, Lamping-Yes, Littlejohn-Yes, Maslak-Yes, Plant-Yes, and Repke-Yes

4:40 p.m.

RES. 97-131

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

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-960306-042)

In The Matter Of:

DANIEL T. ZACHMAN, R.Ph.
55 Pearl Drive
Shelby, Ohio 44875
(R.Ph. No. 03-3-11720)

INTRODUCTION

THE MATTER OF DANIEL T. ZACHMAN CAME TO HEARING ON MARCH 5, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

DANIEL T. ZACHMAN WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Paul Kover, Ohio State Board of Pharmacy
- (2) Daniel T. Zachman, Respondent

Respondent's Witnesses:

- (1) Nick Kallis, Pharmacist's Rehabilitation Organization, Inc.
- (2) John M. Wechter, Pharmacist's Rehabilitation Organization, Inc.
- (3) Richard Kryc, Pharmacist's Rehabilitation Organization, Inc.
- (4) Mark Schneider, Alcoholic's Anonymous Sponsor
- (5) Rev. James Humphrey, Trinity United Methodist Church

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity for Hearing letter dated March 6, 1996.
- (2) Exhibit 1A--Amendment Notice dated March 15, 1996.
- (3) Exhibit 1B--Hearing Request letter dated March 18, 1996.
- (4) Exhibit 1C--Hearing Schedule letter dated March 21, 1996.
- (5) Exhibit 1D--Continuance Request letter dated September 18, 1996.
- (6) Exhibit 1E--Hearing Schedule letter dated September 24, 1996.
- (7) Exhibit 2--Pharmacist File Front Sheet of Daniel T. Zachman showing original date of registration as August 4, 1976.
- (8) Exhibit 2A--Renewal Application for Pharmacist License, No. 03-3-11720, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of Daniel T. Zachman dated June 12, 1995.
- (9) Exhibit 3A--Sealed Record--Seven-page copy of forty prescriptions for Patient #1 numbered as follows: 73279, C74187, 74967, C74968, 76037, 76702, C77590, 78467, 79475, 80515, 81482, 82510, 83486, 84354, 84355, 85057, 85058, 85059, 85719, 86747, 87865, 87866, 87867, 88838, 89795, 90972, 91628, 91629, 91630, 91631, 92910, 93759, 95366, 96278, 96279, 96280, 97134, 98065, 98757, and 98758.
- (10) Exhibit 3B--Sealed Record--Copy of fifty-two pages of ManCI Control Drug Inventory dated from December 17, 1993, through February 15, 1996.
- (11) Exhibit 3C--Sealed Record--Seven-page copy of Medication Kardex for Patient #1 dated from January, 1994, through January, 1995.
- (12) Exhibit 3D--Sealed Record--Copy of fifty-six pages of Mansfield Correctional Prescription Log Reports regarding Patient #1 dated from January 11, 1994, through January 6, 1995.
- (13) Exhibit 3E--Sealed Record--Seven-page copy of fifty-six prescriptions for Patient #1 numbered as follows: 99549, 99550, 99551, 100387, 100388, 100389, 101323, 101607, 101608, 102553, 102554, 102555, 102556, 103681, 103682, 104810, 106036, 106037, 106038, 106737, 108006, 108993, 110175, 111007, 111008, 112039, 112040, 113016, 114869, 114870, 114872, 114873, 114906, 115862, 117139, 117140, 117141, 118399, 119449, 119450, 119451, 120570, 120571, 121648, 121649, 121650, 122996, 124415, 124416, 124417, 125792, 126892, 126893, 126894, and 127503.
- (14) Exhibit 3F--Sealed Record--Copy of six-page Ohio State Reformatory Controlled Drug Inventory for Darvon (generic) 65mg dated from April 23, 1991, through February 20, 1996.
- (15) Exhibit 3G--Sealed Record--Ten-page copy of Medication Kardex of Patient #1 dated from January, 1995, through February, 1996.
- (16) Exhibit 3H--Sealed Record--Copy of sixty-one pages of Mansfield Correctional Prescription Log Reports regarding Patient #1 dated from January 18, 1995, through February 5, 1996.
- (17) Exhibit 3I--Sealed Record--Copy of five-page chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #1.
- (18) Exhibit 3J--Sealed Record--Copy of six-page chart showing distribution of Propoxyphene HCl 65mg Capsules at Mansfield Reformatory to Patient #1.
- (19) Exhibit 4A--Sealed Record--Copy of prescriptions for Patient #2 numbered 125185 and 125184.
- (20) Exhibit 4B--Sealed Record--Copy of chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #2.
- (21) Exhibit 4C--Sealed Record--Copy of Medication Kardex of Patient #2 for December, 1995.
- (22) Exhibit 5A--Sealed Record--Copy of prescriptions for Patient #3 numbered 112861 and 115298.
- (23) Exhibit 5B--Sealed Record--Copy of chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #3.

- (24) Exhibit 5C--Sealed Record--Two-page copy of Medication Kardex of Patient #3 dated from June, 1995, through September, 1995.
- (25) Exhibit 6A--Sealed Record--Eleven-page copy of forty-four prescriptions for Patient #4 numbered as follows: 89590, 90708, 91480, 92682, 93525, 94924, 95855, 96758, 97598, 98502, 98701, 99547, 100503, 101576, 102498, 102499, 103674, 104678, 105750, 106827, 107840, 109536, 110449, 111467, 112469, 113389, 113390, 114690, 115667, 116010, 116769, 117915, 119161, 120291, 121471, 122629, 123799, 125530, 126536, 127314, 128093, 129222, 130327, and 130328.
- (26) Exhibit 6B--Sealed Record--Copy of eight-page chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #4.
- (27) Exhibit 6C--Sealed Record--Seven-page copy of Medication Kardex of Patient #4 dated from August, 1994, through December, 1995.
- (28) Exhibit 6D--Sealed Record--Copy of forty-four pages of Mansfield Correctional Prescription Log Reports dated from September 1, 1994, through December 22, 1995.
- (29) Exhibit 7A--Sealed Record--Copy of prescription for Patient #5 numbered 109597.
- (30) Exhibit 7B--Sealed Record--Copy of chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #5.
- (31) Exhibit 7C--Sealed Record--Copy of Medication Kardex of Patient #5 dated from May, 1995, to June, 1995.
- (32) Exhibit 8A--Sealed Record--Copy of prescription for Patient #6 numbered 125944.
- (33) Exhibit 8B--Sealed Record--Copy of chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #6.
- (34) Exhibit 8C--Sealed Record--Copy of Medication Kardex of Patient #6 dated December, 1995.
- (35) Exhibit 9A--Sealed Record--Five-page copy of eighteen prescriptions for Patient #7 numbered as follows: 96544, 97476, 98266, 99077, 100049, 101251, 102221, 103265, 104387, 105468, 107537, 108626, 108627, 109747, 110605, 111718, 112236, 112945, and one written for Darvocet N-100 dated April 14, 1995, number illegible.
- (36) Exhibit 9B--Sealed Record--Copy of three-page chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #7.
- (37) Exhibit 9C--Sealed Record--Seven-page copy of Medication Kardex of Patient #7 dated from October, 1994, through August, 1995.
- (38) Exhibit 9D--Sealed Record--Copy of twelve pages of Mansfield Correctional Prescription Log Reports dated from December 29, 1994, through July 20, 1995.
- (39) Exhibit 10A--Sealed Record--Fifteen-page copy of sixty-one prescriptions for Patient #8 numbered as follows: 83031, 83032, 83993, 83994, 85126, 85971, 85972, 87124, 88130, 88826, 88838, 90662, 90785, 91665, 92844, 93824, 95378, 101236, 101237, 101238, 101239, 101307, 102040, 103220, 104270, 104271, 105362, 106402, 106403, 107603, 108189, 108190, 109279, 109281, 110448, 111364, 112326, 112327, 112328, 113152, 114467, 115564, 116596, 117446, 117447, 117448, 117449, 118559, 119798, 119799, 119800, 121106, 122112, 123224, 123742, 125150, 126230, 127975, 129012, 129947, and 131187.
- (40) Exhibit 10B--Sealed Record--Copy of seven-page chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #8.
- (41) Exhibit 10C--Sealed Record--Eight-page copy of Medication Kardex of Patient #8 dated from March, 1995, through January, 1996.
- (42) Exhibit 10D--Sealed Record--Copy of eighteen pages of Mansfield Correctional Prescription Log Reports dated from June 12, 1995, through January 11, 1996.
- (43) Exhibit 11A--Sealed Record--Four-page copy of thirteen prescriptions for Patient #9 numbered as follows: 118967, 120051, 121378, 121904, 122524, 123719, 125357, 126551, 127315, 128092, 129031, 130222, and 131152.
- (44) Exhibit 11B--Sealed Record--Copy of two-page chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #9.
- (45) Exhibit 11C--Sealed Record--Two-page copy of Medication Kardex of Patient #9 dated from September, 1995, through February, 1996.
- (46) Exhibit 11D--Sealed Record--Copy of two pages of Mansfield Correctional Prescription Log Reports dated October 12, 1995.
- (47) Exhibit 12A--Sealed Record--Three-page copy of ten prescriptions for Patient #10 numbered as follows: 81198, 118377, 119561, 120568, 121991, 121992, 122554, 122555, 123186, 124730, 125939, 126972, 127782, 128673, and 128674.
- (48) Exhibit 12B--Sealed Record--Copy of three-page chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #10.

- (49) Exhibit 12C--Sealed Record-Three-page copy of Medication Kardex of Patient #10 dated from September, 1995, through February, 1996.
- (50) Exhibit 12D--Sealed Record-Copy of two pages of Mansfield Correctional Prescription Log Reports dated November 20, 1995.
- (51) Exhibit 12E--Sealed Record-Copy of fifteen-page Controlled Substance Accountability Records of Generic Darvocet N-100mg dated from January 28, 1994, through February 2, 1996.
- (52) Exhibit 13A--Sealed Record-Three-page copy of nine prescriptions for Patient #11 numbered as follows: 121435, 122982, 124423, 125790, 127061, 127780, 128984, 129945, and 131153.
- (53) Exhibit 13B--Sealed Record-Copy of two-page chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #11.
- (54) Exhibit 13C--Sealed Record-Two-page copy of Medication Kardex of Patient #11 dated from October, 1995, through February, 1996.
- (55) Exhibit 14A--Sealed Record-Eleven-page copy of fifty-one prescriptions for Patient #12 numbered as follows: 74023, 74433, 79968, 81003, 81891, 82719, 84562, 85404, 85405, 85406, 87297, 88124, 88952, 88953, 88954, 90932, 91771, 92843, 93730, 95129, 97014, 98880, 100921, 102813, 104945, 106032, 107602, 108572, 109120, 110176, 110958, 110959, 112202, 112782, 114112, 114113, 114114, 114115, 114116, 116542, 117441, 117883, 119077, 120054, 121182, 122163, 122537, 125377, 126226, 128114, and 129237.
- (56) Exhibit 14B--Sealed Record-Copy of ten-page chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #12.
- (57) Exhibit 14C--Sealed Record-Thirteen-page copy of Medication Kardex of Patient #12 dated from January, 1994, through February, 1996.
- (58) Exhibit 14D--Sealed Record-Copy of sixty-eight pages of Mansfield Correctional Prescription Log Reports dated from May 25, 1994, through January 29, 1996.
- (59) Exhibit 15A--Sealed Record-Twelve-page copy of fifty-eight prescriptions for Patient #13 numbered as follows: 73453, 75594, 76626, 78468, 79491, 80524, 81560, 82464, 83345, 84280, 85254, 86288, 87380, 88353, 89241, 90206, 90207, 91124, 91125, 92197, 92198, 93224, 93225, 94651, 95757, 96737, 97599, 98558, 99655, 99656, 99657, 100646, 101823, 102922, 104037, 111600, 112507, 113662, 114858, 115652, 115653, 116765, 117912, 117913, 117914, 119250, 120295, 121415, 122628, 123785, 125532, 126654, 127602, 128704, 129399, 129400, 129401, and 130810.
- (60) Exhibit 15B--Sealed Record-Copy of eight-page chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #13.
- (61) Exhibit 15C--Sealed Record-Ten-page copy of Medication Kardex of Patient #13 dated from January, 1994, through February, 1996.
- (62) Exhibit 15D--Sealed Record-Copy of ninety-two pages of Mansfield Correctional Prescription Log Reports dated from January 12, 1994, through February 2, 1996.
- (63) Exhibit 16A--Sealed Record-Fourteen-page copy of sixty-one prescriptions for Patient #14 numbered as follows: 73226, 74109, 75013, 76145, 76900, 77847, 78686, 79515, 80514, 81430, 82499, 83457, 83458, 84062, 84937, 85704, 85748, 87688, 88795, 89611, 90735, 91539, 91540, 91541, 93281, 93282, 94312, 95657, 96603, 97017, 97857, 98836, 99829, 100883, 101637, 102641, 102716, 103885, 104812, 106095, 106096, 110984, 111887, 112817, 113876, 115099, 116126, 117224, 118200, 119274, 120296, 121414, 122048, 123143, 124525, 125791, 126890, 127398, 127818, 128330, and 129312.
- (64) Exhibit 16B--Sealed Record-Copy of nine-page chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #14.
- (65) Exhibit 16C--Sealed Record-Twenty-three page copy of Medication Kardex of Patient #14 dated from January, 1994, through February, 1996.
- (66) Exhibit 16D--Sealed Record-Copy of sixty-one pages of Mansfield Correctional Prescription Log Reports dated from June 15, 1994, through January 17, 1996.
- (67) Exhibit 17A--Sealed Record-Twelve-page copy of fifty-one prescriptions for Patient #15 numbered as follows: 78393, 79436, 80882, 82114, 82115, 83051, 84092, 85050, 86085, 87362, 88219, 89166, 90151, 90397, 91297, 92218, 92979, 93795, 95326, 96268, 97119, 97984, 98884, 99841, 100511, 100512, 100513, 101590, 102496, 102721, 103784, 104811, 105201, 106016, 106017, 106932, 108010, 109211, 118971, 119047, 120053, 121107, 122165, 122687, 124041, 125531, 126616, 127557, 128732, 129225, 130425; and one prescription written for Darvocet N-100 dated December 19, 1994, number illegible.
- (68) Exhibit 17B--Sealed Record-Copy of seven-page chart showing distribution of Propoxyphene Napsylate 100/650 at Mansfield Reformatory to Patient #15.

- (69) Exhibit 17C--Sealed Record-Ten page copy of Medication Kardex of Patient #15 dated from March, 1994, through January, 1996.
- (70) Exhibit 17D--Sealed Record-Copy of four pages of Mansfield Correctional Prescription Log Reports dated December 2, 1994, and November 13, 1995.
- (71) Exhibit 18--Two-page certified copy of Judgment Entry on Sentence in the Crawford County Common Pleas Court, Case No. 6096 CR84 54, of Daniel T. Zachman dated June 13, 1984.
- (72) Exhibit 19--Copy of three-page Order of the State Board of Pharmacy, Docket No. 6-81-1, of Daniel T. Zachman dated August 3, 1984.
- (73) Exhibit 21--Sealed Record-Copy of Inmate Code (patient key) for Case No. 96-1133.
- (74) Exhibit 22--Certified copy of Sentencing Judgment Entry in the Richland County Common Pleas Court, Case No. 96-CR-428-D, of Daniel T. Zachman dated February 25, 1997; and certified copy of Statement of Fact, Restitution, in the Richland County Common Pleas Court, Docket No. 96CR428, of Daniel Thomas Zachman dated February 25, 1997.

Respondent's Exhibits:

- (1) Exhibit A--Copies of the following: Section 1--Letters of Recommendation--Two-page letter from Mary Spain dated February 17, 1997; letter from Paul M. Martin dated February 21, 1997; letter from Frank L. Benham dated February 21, 1997; letter from Richard A. Kryc dated February 21, 1997; letter from Nick A. Kallis dated February 20, 1997; letter from John Wechter dated February 23, 1997; letter from Mark A. Schneider dated February 16, 1997; letter from James H. Humphrey dated February 18, 1997; two-page letter from Elaine S. Zachman dated February 22, 1997; two-page letter from Jean and Donald L. Wagenman dated February 22, 1997; two-page letter from Dan Bronon dated February 18, 1997; and letter from Vickie Graves dated February 20, 1997. Section 2--Drug Screens--Forty-two urine drug screen reports dated from February 24, 1996, through February 28, 1997. Section 3--AA Attendance--Certificate of appreciation of Dan Zackman (sic) dated February 16, 1997; certificate of appreciation of Dan Zachman dated February 21, 1997; and eleven pages of Verification of Meeting Attendance of Dan Zachman dated from April 26, 1996, through February 26, 1997. Section 4--ManCI Commendation Letters--ManCI Employee of the Month Certificate of Daniel Zachman for January, 1993; letter from Dennis A. Baker dated September 8, 1992; letter from Dennis A. Baker dated April 26, 1993; letter from Dennis A. Baker dated July 6, 1993; letter from Dennis A. Baker dated July 15, 1994; letter from Joe McNeil dated March 29, 1995; and Employee of the Month Certificate of Daniel Zachman dated September 8, 1995. Section 5--PRO and RMS Agreements, Recovery Contract--Two-page Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of Dan Zachman dated April 16, 1996; two-page Shepherd Hill Hospital Recovery Monitoring Services Agreement of Daniel T. Zachman dated May 7, 1996; and two-page Shepherd Hill Hospital Recovery Plan of Daniel T. Zachman dated May 8, 1996. Section 6--Shepard (sic) Hill Progress Reports--Letter from Mary Spain dated January 10, 1997; letter from Mary Spain dated November 7, 1996; letter from Mary Spain dated October 7, 1996; letter from Mary Spain dated September 5, 1996; letter from Mary Spain dated August 2, 1996; letter from Mary Spain dated July 15, 1996; letter from J. R. Abrahamsen dated May 10, 1996; and letter from J. R. Abrahamsen dated April 2, 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 Daniel T. Zachman was originally licensed to practice pharmacy in the state of Ohio on August 4, 1976, pursuant to examination; and on March 6, 1996, Daniel T. Zachman's license was summarily suspended in accordance with Sections 3719.121(A) and 3719.121(B) of the Ohio Revised Code.
- (2) Daniel T. Zachman did, from January 12, 1994, through February 15, 1996, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of the State of Ohio, beyond the express or implied consent of the owner, to wit: on 275 different occasions, Daniel T. Zachman stole a varying number of

Propoxyphene Napsylate with Acetaminophen tablets, a schedule IV controlled substance, totaling 2,718 tablets:

<u>Date</u>	<u>Quantity</u>	<u>Patient No.</u>
01/12/94	16	14
01/19/94	6	12
01/20/94	20	13
01/21/94	10	1
01/24/94	18	12
01/27/94	2	14
01/28/94	16	1
02/10/94	1	14
02/10/94	10	1
02/18/94	27	13
02/22/94	16	1
02/24/94	1	14
03/06/94	14	13
03/07/94	8	1
03/09/94	4	14
03/20/94	6	1
03/23/94	3	14
04/01/94	4	15
04/03/94	20	13
04/03/94	8	1
04/04/94	3	14
04/18/94	8	13
04/18/94	2	14
04/18/94	4	1
04/21/94	18	15
04/25/94	1	12
05/01/94	11	14
05/01/94	22	1
05/02/94	20	13
05/09/94	3	15
05/09/94	14	12
05/15/94	3	14
05/16/94	18	13
05/16/94	6	1
05/18/94	8	12
05/23/94	5	15
05/26/94	12	13
05/30/94	6	12
05/30/94	16	1
06/07/94	18	14
06/08/94	2	15
06/09/94	36	13
06/16/94	17	1
06/20/94	4	14
06/22/94	4	15
06/26/94	2	13
06/27/94	20	12
06/29/94	16	1
07/04/94	10	14
07/04/94	2	1
07/06/94	4	15
07/10/94	14	12
07/11/94	30	13
07/17/94	14	14
07/19/94	12	1
07/22/94	11	15
07/25/94	14	13
07/31/94	8	14

08/01/94	16	1
08/05/94	18	12
08/07/94	3	15
08/08/94	8	13
08/14/94	4	14
08/16/94	8	1
08/17/94	16	12
08/21/94	1	15
08/22/94	28	13
08/28/94	2	14
08/29/94	18	1
08/30/94	10	12
09/01/94	9	15
09/05/94	12	13
09/06/94	18	15
09/08/94	10	4
09/11/94	4	14
09/19/94	5	15
09/20/94	11	13
09/21/94	8	4
09/26/94	36	12
09/29/94	6	14
10/02/94	6	15
10/02/94	4	13
10/04/94	24	14
10/06/94	4	4
10/10/94	36	12
10/11/94	56	1
10/12/94	12	15
10/15/94	44	13
10/19/94	12	4
10/24/94	5	15
10/25/94	2	12
10/25/94	42	1
10/30/94	10	14
10/31/94	18	13
11/06/94	14	12
11/07/94	2	15
11/07/94	24	1
11/13/94	24	13
11/16/94	4	4
11/20/94	16	12
11/22/94	1	15
11/22/94	4	1
11/27/94	2	14
11/28/94	4	13
11/29/94	4	4
12/06/94	11	15
12/06/94	28	1
12/08/94	10	7
12/13/94	2	4
12/13/94	12	13
12/18/94	18	12
12/18/94	4	14
12/19/94	9	15
12/19/94	30	1
12/21/94	16	7
12/27/94	2	4
12/27/94	16	13
12/30/94	7	4
01/02/95	2	15
01/03/95	14	1

01/09/95	12	9
01/10/95	8	4
01/11/95	2	13
01/13/95	20	1
01/16/95	1	15
01/16/95	4	12
01/18/95	3	7
01/30/95	6	14
02/02/95	7	7
02/12/95	2	13
02/17/95	18	7
02/21/95	20	4
02/21/95	3	15
02/21/95	10	12
02/21/95	15	14
02/22/95	10	14
02/24/95	1	15
02/27/95	6	13
03/02/95	22	7
03/08/95	9	15
03/09/95	2	14
03/12/95	2	12
03/14/95	6	13
03/17/95	13	7
03/21/95	8	4
03/22/95	21	15
03/30/95	14	7
03/31/95	1	15
04/05/95	2	4
04/06/95	1	15
04/06/95	24	12
04/07/95	10	14
04/10/95	3	14
04/12/95	19	8
04/13/95	7	7
04/18/95	2	4
04/19/95	22	15
04/20/95	2	12
04/27/95	17	7
04/27/95	12	8
05/02/95	12	4
05/03/95	13	15
05/07/95	17	8
05/10/95	2	12
05/11/95	13	7
05/16/95	4	4
05/17/95	6	12
05/19/95	21	15
05/21/95	23	8
05/23/95	3	15
05/25/95	5	7
06/01/95	10	12
06/02/95	6	5
06/06/95	8	4
06/06/95	3	8
06/08/95	20	7
06/13/95	20	12
06/20/95	4	4
06/20/95	11	8
06/22/95	24	7
06/26/95	28	14
06/28/95	11	7

06/28/95	2	12
07/02/95	1	8
07/06/95	3	13
07/11/95	20	12
07/13/95	7	7
07/16/95	2	8
07/25/95	26	7
07/25/95	2	12
07/30/95	2	8
08/02/95	12	13
08/10/95	6	12
08/11/95	1	3
08/15/95	24	13
08/21/95	6	14
08/24/95	12	8
09/05/95	16	12
09/06/95	3	8
09/06/95	11	14
09/11/95	10	12
09/13/95	8	14
09/19/95	5	8
09/24/95	7	12
09/25/95	9	15
09/27/95	4	14
09/29/95	4	10
10/02/95	5	8
10/04/95	4	9
10/05/95	2	15
10/05/95	10	12
10/09/95	4	4
10/09/95	4	13
10/09/95	12	14
10/11/95	6	10
10/17/95	6	15
10/18/95	2	12
10/20/95	4	9
10/23/95	8	13
10/23/95	6	14
10/26/95	12	9
10/26/95	17	10
10/29/95	6	14
10/30/95	12	8
10/30/95	8	15
11/01/95	13	12
11/03/95	2	12
11/05/95	14	4
11/05/95	8	13
11/12/95	9	10
11/13/95	4	8
11/16/95	5	12
11/17/95	3	8
11/17/95	7	9
11/21/95	2	11
11/21/95	1	15
11/26/95	1	10
11/27/95	4	14
11/28/95	20	8
11/30/95	12	9
12/03/95	7	15
12/05/95	3	2
12/06/95	4	11
12/06/95	16	14

12/10/95	5	10
12/12/95	7	8
12/14/95	16	9
12/16/95	2	6
12/17/95	3	15
12/17/95	6	13
12/20/95	2	14
12/21/95	9	10
12/21/95	2	11
12/22/95	2	4
12/22/95	5	12
12/25/95	6	12
12/27/95	10	4
12/27/95	12	8
12/29/95	6	9
01/03/96	4	10
01/03/96	1	11
01/03/96	4	14
01/09/96	10	14
01/15/96	2	13
01/17/96	27	9
01/22/96	8	8
01/22/96	3	15
01/22/96	6	12
01/24/96	6	13
01/24/96	2	14
01/29/96	2	11
02/01/96	13	9
02/05/96	1	12
02/11/96	1	10
02/15/96	4	9

Such conduct is in violation of Section 2913.02 of the Ohio Revised Code (as was in effect prior to July 1, 1996).

- (3) Daniel T. Zachman did, from January 23, 1995, through February 15, 1996, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of the State of Ohio, beyond the express or implied consent of the owner, to wit: on 23 different occasions, Daniel T. Zachman stole a varying number of Propoxyphene Hydrochloride capsules, a schedule IV controlled substance, totaling 195 capsules:

<u>Date</u>	<u>Quantity</u>	<u>Patient No.</u>
01/23/95	4	1
02/04/95	6	1
02/08/95	4	1
02/23/95	16	1
04/21/95	5	1
05/04/95	10	1
05/19/95	8	1
06/16/95	10	1
06/30/95	4	1
07/31/95	3	1
09/06/95	8	1
09/14/95	12	1
09/28/95	18	1
10/11/95	16	1
10/24/95	22	1
11/08/95	8	1
11/27/95	6	1
12/06/95	10	1
12/22/95	2	1

12/28/95	4	1
01/11/96	4	1
01/24/96	11	1
02/06/96	4	1

Such conduct is in violation of Section 2913.02 of the Ohio Revised Code (as was in effect prior to July 1, 1996).

- (4) Daniel T. Zachman did, from January 21, 1994, through February 15, 1996, knowingly make a false statement in a record required by Chapter 3719. of the Ohio Revised Code, to wit: on various dates Daniel T. Zachman recorded false information in records regarding drugs being returned to the drug stock while practicing pharmacy at the Mansfield Correctional Institution in order to cover for his drug thefts of Propoxyphene Napsylate with Acetaminophen tablets, a schedule IV controlled substance:

<u>Date</u>	<u>Patient No.</u>
01/21/94	1
01/28/94	1
02/10/94	1
02/22/94	1
03/07/94	1
03/23/94	14
05/09/94	15
05/09/94	12
05/16/94	13
06/16/94	1
06/29/94	1
07/19/94	1
08/16/94	1
09/20/94	13
09/29/94	14
10/25/94	1
11/22/94	1
12/06/94	15
12/30/94	4
01/03/95	1
01/13/95	1
02/21/95	14
02/21/95	12
02/24/95	15
03/14/95	7
03/14/95	13
03/31/95	15
05/23/95	15
06/02/95	5
09/06/95	8
09/06/95	14
09/11/95	12
09/25/95	15
10/05/95	15
10/05/95	12
11/01/95	12
11/03/95	12
11/17/95	8
11/27/95	14
12/05/95	2
12/22/95	4
12/22/95	12
12/29/95	9
01/09/96	9
01/22/96	8

01/24/96	14
01/24/96	13
02/15/96	9

Such conduct is in violation of Section 2925.23(A) of the Ohio Revised Code (as was in effect prior to July 1, 1996).

- (5) Daniel T. Zachman did, from February 8, 1995, through February 6, 1996, knowingly make a false statement in a record required by Chapter 3719. of the Ohio Revised Code, to wit: on various dates Daniel T. Zachman recorded false information in records regarding drugs being returned to the drug stock while practicing pharmacy at the Mansfield Correctional Institution in order to cover for his drug thefts of Propoxyphene Hydrochloride capsules, a schedule IV controlled substance:

<u>Date</u>	<u>Patient No.</u>
02/08/95	1
02/23/95	1
04/21/95	1
05/19/95	1
06/16/95	1
06/30/95	1
07/31/95	1
09/06/95	1
09/28/95	1
11/27/95	1
12/22/95	1
01/11/96	1
01/24/96	1
02/06/96	1

Such conduct is in violation of Section 2925.23(A) of the Ohio Revised Code (as was in effect prior to July 1, 1996).

- (6) Daniel T. Zachman is addicted to the use of controlled substances, to wit: Daniel T. Zachman was convicted of a felony drug abuse offense in 1984; Daniel T. Zachman was disciplined by the Board for committing acts constituting felony drug abuse offenses in 1984; currently, Daniel T. Zachman has stolen drugs and forged records of drugs being returned to the drug stock to cover for his thefts from Mansfield Correctional Institution; and, on February 15, 1996, Daniel T. Zachman admitted to Board agents that he is psychologically addicted to Propoxyphene. Such conduct indicates that Daniel T. Zachman is addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

CONCLUSIONS OF LAW

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

- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (4) and (5) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925., or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued March 6, 1996.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Daniel T. Zachman:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-3-11720, held by Daniel T. Zachman effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-3-11720, held by Daniel T. Zachman effective as of the date of the mailing of this Order.
- (C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-3-11720, held by Daniel T. Zachman 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. 03-3-11720, held by Daniel T. Zachman 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. Lamping and approved by the Board (Aye-4/Nay-3).

4:48 p.m. The Board recessed until Thursday, March 6, 1997, at 8:00 a.m.

THURSDAY, MARCH 6, 1997

8:00 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:

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

RES. 97-132 The Board reviewed administrative reports and correspondence not requiring action by the Board. The Executive Director reported that McKesson had not, as of this date, responded in writing to the Board's letter dated December 6, 1996 regarding the CareMax marketing programs. Board directed staff to contact the attorneys for McKesson and determine the status of the program in Ohio and whether or not they intend to respond.

8:26 a.m.

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing pursuant to Ohio Revised Code Chapters 119. and 4729. in the matters of R.Ph. James N. Murphy and Kenwood Pharmacy, Cincinnati. Mr. Lamping recused himself and left the meeting since he would not be participating in the hearing.

11:50 a.m.

The hearing was recessed until 12:30 p.m.

12:40 p.m.

The Board reconvened without Mr. Lamping and Mr. Maslak moved that the Board go into Executive Session to consider the investigation of charges or complaints against a public employee, official, licensee, or regulated individual. The motion was seconded by Mr. Cavendish and a roll call vote was conducted by President Neuber as follows: Adelman-Yes, Hanna-Yes, Littlejohn-Yes, Maslak-Yes, Plant-Yes, and Repke-Yes.

12:58 p.m.

The Executive Session was concluded and the meeting opened to the public. The hearing in the matters of R.Ph. James N. Murphy and Kenwood Pharmacy was reconvened.

8:37 p.m.

The hearing was concluded and the Board recessed until Friday, March 7, 1997, at 8:30 a.m.

FRIDAY, MARCH 7, 1997

8:30 a.m. ROLL CALL

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

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

Mrs. Plant moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony presented during the hearing in the matters of R.Ph. James N. Murphy and Kenwood Pharmacy, Cincinnati. The motion was seconded by Mr. Maslak and a roll call vote was conducted by President Neuber as follows: Adelman-Yes, Cavendish-Yes, Hanna-Yes, Lamping-Yes, Littlejohn-Yes, Maslak-Yes, Plant-Yes, and Repke-Yes.

9:40 p.m.

RES. 97-133

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

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-960904-011)

In The Matter Of:

JAMES N. MURPHY, R.Ph.
7220 Winding Way
Cincinnati, Ohio 45236
(R.Ph. No. 03-3-07899)

INTRODUCTION

THE MATTER OF JAMES N. MURPHY CAME TO HEARING ON MARCH 6, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JAMES N. MURPHY WAS REPRESENTED BY WARREN J. RITCHIE, 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, Ohio State Board of Pharmacy
- (2) Michael E. Cluxton, Ohio State Board of Pharmacy
- (3) Charles Konkus; Loveland, Ohio
- (4) Cheryl Rooks, formerly with the Ohio State Board of Pharmacy
- (5) Robert H. Amiet, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) James N. Murphy, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter of James N. Murphy dated September 4, 1996.
- (2) Exhibit 1A--Notice of Opportunity letter of Kenwood Pharmacy dated September 4, 1996.
- (3) Exhibit 1B--Hearing Request letter dated September 19, 1996.
- (4) Exhibit 1C--Hearing Schedule letter dated September 24, 1996.
- (5) Exhibit 1D--Amendment Notice of James N. Murphy dated October 4, 1996.
- (6) Exhibit 1E--Amendment Notice of Kenwood Pharmacy dated October 4, 1996.
- (7) Exhibit 1F--Renewal Application for Pharmacist License, No. 03-3-07899, for a license to practice pharmacy in Ohio from September 15, 1996, to September 15, 1997, of James N. Murphy dated June 29, 1996.
- (8) Exhibit 1G--Two-page Application for Registration as a Terminal Distributor of Dangerous Drugs of Kenwood Pharmacy dated November 27, 1982; Application for Registration as a Terminal Distributor of Dangerous Drugs of Kenwood Pharmacy dated January 28, 1982, and Supplement Application for Registration as a Terminal Distributor of Dangerous Drugs; and thirteen Renewal Applications for Annual License as a Terminal Distributor of Kenwood Pharmacy for the years of 1984 through 1996.
- (9) Exhibit 2--Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated February 7, 1983.
- (10) Exhibit 3--Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated September 4, 1985.
- (11) Exhibit 4--Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated March 28, 1990, with attached letter from James N. Murphy, not dated, and letter from Jamie Tenbrink Knight dated April 3, 1990.
- (12) Exhibit 4A--Two-page Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated April 2, 1990.
- (13) Exhibit 5--Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated November 30, 1990.
- (14) Exhibit 5A--Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated January 9, 1991; pink sheet copy of Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated January 9, 1991; and four-page policy for Extemporaneous Preparation of Pharmacy Products.

- (15) Exhibit 5B--Copy of three-page Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated June 6, 1995.
- (16) Exhibit 5C--Copy of letter from Jim (sic James N. Murphy) dated June 30, 1995; copy of 3PM computer printout; copy of letter from Jane Ertzbischoff dated June 27, 1995; copy of response to pink sheet of Kenwood Pharmacy; copy of "Policy for Pharmacist Record Keeping" of Kenwood Pharmacy, not dated; copy of "Policy for Patient Counseling" of Kenwood Pharmacy, not dated; copy of Kenwood Pharmacy Patient Information Leaflet; copy of Kenwood Pharmacy Prescription Receipt; copy of Kenwood Pharmacy Universal Signature Log; copy of explanation regarding 3PM computer software of Jim (sic James N. Murphy); copy of Policy for Sale of Exempt Narcotics of Kenwood Pharmacy; and copy of Policy for Class II Narcotics of Kenwood Pharmacy.
- (17) Exhibit 6--Sealed Record-Prescription No. N266693.
- (18) Exhibit 7--Sealed Record-Prescription No. N208865.
- (19) Exhibit 8--Sealed Record-Prescription No. N266296.
- (20) Exhibit 9--Sealed Record-Prescription No. N232559.
- (21) Exhibit 10--Sealed Record-Prescription No. N208837.
- (22) Exhibit 11--Sealed Record-Prescription No. N232288.
- (23) Exhibit 12--Sealed Record-Prescription No. N208672.
- (24) Exhibit 13--Sealed Record-Original and Telephone Prescription No. N265993.
- (25) Exhibit 14--Sealed Record-Prescription No. N266037.
- (26) Exhibit 15--Sealed Record-Prescription No. N266030.
- (27) Exhibit 16--Sealed Record-Prescription No. N265987.
- (28) Exhibit 17--Sealed Record-Prescription No. N265973.
- (29) Exhibit 18--Sealed Record-Prescription No. N266540.
- (30) Exhibit 19--Sealed Record-Kenwood Pharmacy computer printout of Prescription and Refill Register dated from May 1, 1995, through June 5, 1995.
- (31) Exhibit 20--Sealed Record-Copy of four pages from the Record of Sales of Exempt Narcotic Preparations booklet of Kenwood Pharmacy dated from April 9, 1993, through May 12, 1994.
- (32) Exhibit 20A--Sealed Record-Copy of one page from the Record of Sales of Exempt Narcotic Preparations booklet of Kenwood Pharmacy dated from December 22, 1992, through February 5, 1993.
- (33) Exhibit 21--Prescription (Medicaid and Third Party Insurance) Claim Log of Kenwood Pharmacy dated June 1 and 5, 1995.
- (34) Exhibit 22--Sealed Record-Prescription No. N715007.
- (35) Exhibit 23--Sealed Record-Prescription No. N716075.
- (36) Exhibit 24--Sealed Record-Prescription No. N718649.
- (37) Exhibit 25--Sealed Record-Prescription No. N721754.
- (38) Exhibit 26--Sealed Record-Prescription No. N727454.
- (39) Exhibit 27--Sealed Record-Prescription No. N733369.
- (40) Exhibit 28--Sealed Record-Prescription No. 737646.
- (41) Exhibit 29--Sealed Record-Prescription No. N741329.
- (42) Exhibit 30--Sealed Record-Prescription No. N743216.
- (43) Exhibit 31--Sealed Record-Prescription No. N724536.
- (44) Exhibit 32--Sealed Record-Prescription No. N740332.
- (45) Exhibit 33--Sealed Record-Prescription No. C266167.
- (46) Exhibit 34--Sealed Record-Prescription No. 250797.
- (47) Exhibit 35--Sealed Record-Prescription No. 250800.
- (48) Exhibit 36--Sealed Record-Prescription No. 250799.
- (49) Exhibit 37--Introduction to Ohio's Schedules of Controlled Substances dated July 21, 1994; and attached twenty-one-page Ohio's Schedules of Controlled Substances.
- (50) Exhibit 38--Sealed Record-Prescription No. N637424.
- (51) Exhibit 39--Sealed Record-Prescription No. N645675.
- (52) Exhibit 40--Sealed Record-Prescription No. C740837.
- (53) Exhibit 41--Sealed Record-Prescription No. C741784.
- (54) Exhibit 42--Sealed Record-Prescription No. C745216.
- (55) Exhibit 43--Sealed Record-Prescription No. C746117.
- (56) Exhibit 44--Sealed Record-Prescription No. 748466.
- (57) Exhibit 45--Sealed Record-Prescription No. 749915.
- (58) Exhibit 46--Sealed Record-Prescription No. C755000.
- (59) Exhibit 47--Sealed Record-Prescription No. C756180.
- (60) Exhibit 48--Sealed Record-Prescription No. C763480.

- (61) Exhibit 48A--Sealed Record-Kenwood Pharmacy Record of Prescriptions for James P. Miller dated from May 1, 1990, to April 24, 1991; and two-page Kenwood Pharmacy Record of Prescriptions for James P. Miller dated from January 1, 1987, to April 2, 1990.
- (62) Exhibit 49--Sealed Record-Prescription No. C770330.
- (63) Exhibit 50--Sealed Record-Prescription No. C775632.
- (64) Exhibit 51--Sealed Record-Prescription No. C784556.
- (65) Exhibit 52--Sealed Record-Prescription No. C787009.
- (66) Exhibit 53--Sealed Record-Prescription No. C791243.
- (67) Exhibit 54--Sealed Record-Prescription No. C797095.
- (68) Exhibit 55--Sealed Record-Prescription No. C798990.
- (69) Exhibit 56--Sealed Record-Prescription No. C800140.
- (70) Exhibit 57--Sealed Record-Prescription No. C802230.
- (71) Exhibit 58--Sealed Record-Prescription No. C804098.
- (72) Exhibit 59--Sealed Record-Prescription No. C742981.
- (73) Exhibit 59A--Sealed Record-Two-page Kenwood Pharmacy Record of Prescriptions for Sue Miller dated from January 1, 1987, to April 2, 1990; and Kenwood Pharmacy Record of Prescriptions for Sue Miller dated from May 1, 1990, to April 24, 1991.
- (74) Exhibit 60--Sealed Record-Prescription No. C747152.
- (75) Exhibit 61--Sealed Record-Prescription No. C751418.
- (76) Exhibit 62--Sealed Record-Prescription No. C758427.
- (77) Exhibit 63--Sealed Record-Prescription No. C765314.
- (78) Exhibit 64--Sealed Record-Prescription No. C772830.
- (79) Exhibit 65--Sealed Record-Prescription No. C778324.
- (80) Exhibit 66--Sealed Record-Prescription No. C785562.
- (81) Exhibit 67--Sealed Record-Prescription No. C792515.
- (82) Exhibit 68--Sealed Record-Prescription No. C795789.
- (83) Exhibit 69--Sealed Record-Prescription No. C796879.
- (84) Exhibit 70--Sealed Record-Prescription No. C798022.
- (85) Exhibit 71--Sealed Record-Prescription No. C801494.
- (86) Exhibit 72--Sealed Record-Prescription No. N770646.
- (87) Exhibit 72A--Sealed Record-Two-page Kenwood Pharmacy Record of Prescriptions for Florette Doepker dated from May 1, 1990, to April 24, 1991.
- (88) Exhibit 73--Sealed Record-Prescription No. N773538.
- (89) Exhibit 74--Sealed Record-Prescription No. N774921.
- (90) Exhibit 75--Sealed Record-Prescription No. N777325.
- (91) Exhibit 76--Sealed Record-Prescription No. N780040.
- (92) Exhibit 77--Sealed Record-Prescription No. N782599.
- (93) Exhibit 78--Sealed Record-Prescription No. N786181.
- (94) Exhibit 79--Sealed Record-Prescription No. N788796.
- (95) Exhibit 80--Sealed Record-Prescription No. N791510.
- (96) Exhibit 81--Sealed Record-Prescription No. C797849.
- (97) Exhibit 82--Sealed Record-Prescription No. C799059.
- (98) Exhibit 83--Sealed Record-Prescription No. C800930.
- (99) Exhibit 84--Sealed Record-Prescription No. C804188.
- (100) Exhibit 85--Sealed Record-Prescription No. C791551.
- (101) Exhibit 86--Sealed Record-Prescription No. N710897.
- (102) Exhibit 87--Sealed Record-Prescription No. N729842.
- (103) Exhibit 88--Handwritten statement of Janlyn Pugh signed and notarized on June 27, 1990.
- (104) Exhibit 89--Handwritten statement of Charles R. Konkus signed and notarized on June 21, 1990.
- (105) Exhibit 90--Handwritten statement of Todd McFarland signed and notarized on June 27, 1990.
- (106) Exhibit 95--Copy of page 1608 of the 1988 Physicians' Desk Reference.
- (107) Exhibit 96--Copy of pages 513 and 514 of the 1988 Physicians' Desk Reference.
- (108) Exhibit 97--Copy of pages 1605 and 1606 of the 1988 Physicians' Desk Reference.
- (109) Exhibit 98--Copy of pages 842 and 843 of the 1988 Physicians' Desk Reference.
- (110) Exhibit 99--Copy of pages 2124 and 2125 of the 1988 Physicians' Desk Reference.
- (111) Exhibit 100--Copy of page 1176 of the 1988 Physicians' Desk Reference.
- (112) Exhibit 101--Copy of page 1126 of the 1988 Physicians' Desk Reference.
- (113) Exhibit 102--Copy of pages 725 and 726 of the 1988 Physicians' Desk Reference.

- (114) Exhibit 103--Copy of six-page *Ohio State Board of Pharmacy News* dated February, 1987.

Respondent's Exhibits:

- (1) Exhibit R1A--Copy of James N. Murphy Profile dated March 6, 1997.
- (2) Exhibit R1B--Copy of two pictures showing outside storefront of Kenwood Pharmacy.
- (3) Exhibit R1C--Copy of picture showing outside storefront of Kenwood Pharmacy.
- (4) Exhibit R1D--Copy of picture showing road sign of Kenwood Pharmacy.
- (5) Exhibit R1E--Copy of picture showing the inner pharmacy counter of Kenwood Pharmacy.
- (6) Exhibit R1F--Copy of picture showing inside of Kenwood Pharmacy store.
- (7) Exhibit R1G--Copy of picture showing the outer pharmacy counter of Kenwood Pharmacy.
- (8) Exhibit R1H--Copy of picture showing pharmacy counter of Kenwood Pharmacy and, specifically, a plaque from the National Association of Retail Druggists.
- (9) Exhibit R1I--Copy of plaque of James N. Murphy for Preceptor of the Year given by the University of Cincinnati, College of Pharmacy, Class of 1989.
- (10) Exhibit R1J--Copy of ten-page "Ohio State Board of Pharmacy Summary of Requirements" titled *The Legal Practice of Pharmacy*, date unknown; copy of "Ohio State Board of Pharmacy Compliance Bulletin 96-003" regarding Redux™ (dexfenfluramine), dated June 17, 1996; and copy of three-page "Ohio State Board of Pharmacy Summary of Laws and Rules" titled *Drugs Prescribed by Optometrists* dated May 15, 1996.
- (11) Exhibit R1K--Copy of four-page *Ohio State Board of Pharmacy News* dated August, 1991.
- (12) Exhibit R1L--Copy of four-page *Ohio State Board of Pharmacy News* dated August, 1984.
- (13) Exhibit R1M--Copy of four-page *Ohio State Board of Pharmacy News* dated November, 1984.
- (14) Exhibit R1Q--Copy of letter from Nancy Kirkman, not dated.
- (15) Exhibit R3A--Copy of Kenwood Pharmacy "Policy for Patient Counseling", not dated.
- (16) Exhibit R3B--Copy of Kenwood Pharmacy Patient Information Leaflet for Prescription No. 270231.
- (17) Exhibit R3C--Copy of Kenwood Pharmacy Prescription Receipt.
- (18) Exhibit R3D--Copy of sign stating "attention, all pharmacy personnel, counseling the patient . . .", not dated.
- (19) Exhibit R3E--Copy of sign stating "attention, Our pharmacists will be happy to speak to you . . .", not dated.
- (20) Exhibit R3F--Copy of Kenwood Pharmacy Universal Signature Log.
- (21) Exhibit R3G--Three copies of Certificate of Continuing Pharmaceutical Education Participation of James N. Murphy numbered 702-000-95-030-H03 dated September 28, 1996; and copy of cover of program booklet titled "Legal Considerations in Contemporary Pharmacy Practice - OBRA '90".
- (22) Exhibit R4A--Copy of "Ohio State Board of Pharmacy Compliance Bulletin No. 93-002" regarding Compounding of Prescriptions/Manufacturing.
- (23) Exhibit R4B--Copy of four-page *Ohio State Board of Pharmacy News* dated November, 1993.
- (24) Exhibit R4C--Copy of DEA Form 222, No. 861033501, of Mark E. Grosinger, D.O. dated June 19, 1987.
- (25) Exhibit R4D--Copy of DEA Form 222, No. 861033502, of Mark E. Grosinger, D.O. dated September 22, 1987.
- (26) Exhibit R4E--Copy of DEA Form 222, No. 871995463, of George R. Lanz, D.D.S. dated July 19, 1988.
- (27) Exhibit R4F--Copy of DEA Form 222, No. 871995462, of George R. Lanz, D.D.S. dated November 23, 1987.
- (28) Exhibit R5C--Copy of six-page *Ohio State Board of Pharmacy News* dated February, 1995.
- (29) Exhibit R6A--Copy of prescriptions numbered 247894 and 247895.
- (30) Exhibit R6B--Copy of prescriptions numbered 247899 and 247898.
- (31) Exhibit R6C--Copy of prescriptions numbered 247896 and 247900.

- (32) Exhibit R6D--Copy of Ohio Valley Residential Services Medication Review of Linda Counts dated December 12, 1994.
- (33) Exhibit R 8; 9; 10; 11C--Affidavit of Frank Clement, M.D. signed and notarized on March 3, 1997.
- (34) Exhibit R 8; 9; 10; 11D--Copy of four-page *Ohio State Board of Pharmacy News* dated February, 1992.
- (35) Exhibit R12; 13A--Affidavit of H. E. Rissover, M. D. signed and notarized on February 28, 1997; with copies of state's exhibits 72 through 84 attached.

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that James N. Murphy was originally licensed in the state of Ohio on March 18, 1963, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that James N. Murphy is, and has been during the relevant time periods stated herein, the Responsible Pharmacist at Kenwood Pharmacy, 7677 Montgomery Road, Cincinnati, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) James N. Murphy as the Responsible Pharmacist did, on or about June 6, 1995, and dates immediately preceding, fail to keep accurate records of dangerous drugs and controlled substances received and dispensed by the pharmacy, to wit: Kenwood Pharmacy and its pharmacists committed the following recordkeeping violations:
 - (a) After having been specifically admonished by Board agents for such conduct on February 7, 1983, September 4, 1985, and March 28, 1990, James N. Murphy and/or someone under his control failed to manually initial the following prescriptions: N266693, N208865, N266296, N232559, N208837, N232288, and N208672.
 - (b) After having been specifically admonished by Board agents for such conduct on September 4, 1985, and November 30, 1990, James N. Murphy and/or someone under his control failed to keep proper records from April 12, 1993, through May 12, 1995, of sales of schedule V exempt narcotic preparations in accordance with Section 1306.32 of the Code of Federal Regulations.

Such conduct is in violation of Rule 4729-5-17 of the Ohio Administrative Code (as was in effect prior to January 17, 1997).

- (3) James N. Murphy as the Responsible Pharmacist did, on or about June 6, 1995, and dates immediately preceding, fail to perform patient counseling, to wit: when dispensing medications to patients pursuant to prescriptions, James N. Murphy and/or someone under his control failed to offer patient counseling and failed to properly document the refusal of offers to counsel. Such conduct is in violation of Rule 4729-5-22 of the Ohio Administrative Code.
- (4) James N. Murphy as the Responsible Pharmacist did, on or about December 31, 1984, knowingly sell a controlled substance in an amount greater than three times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: James N. Murphy and/or a pharmacist under his control sold 100 units of Quaalude 300mg, a schedule I controlled substance, pursuant to prescription number N645675. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code (as was in effect prior to July 1, 1996).

- (5) James N. Murphy as the Responsible Pharmacist did, on or about the following dates, intentionally make and/or knowingly possess false or forged prescriptions, to wit: James N. Murphy and/or a pharmacist under his control dispensed drugs pursuant to the following prescriptions, and maintained them in the files of the pharmacy, which were not written for a legitimate medical purpose:

<u>Rx No.</u>	<u>Date Written</u>	<u>Dispensed</u>	<u>Drug</u>	<u>Quantity</u>
C740837	06/15/88	06/15/88	Didrex 50mg	100
C741784	06/15/88	06/29/88	Didrex 50mg	100
C745216	08/16/88	08/16/88	Didrex 50mg	100
C746117	08/16/88	08/30/88	Didrex 50mg	100
748466	09/30/88	09/30/88	Bontril PDM 35mg	100
749915	09/30/88	10/18/88	Bontril PDM 35mg	100
C755000	12/19/88	12/19/88	Didrex 50mg	100
C756180	12/19/88	01/03/89	Didrex 50mg	100
C763480	04/04/89	04/04/89	Didrex 50mg	100
C763480	refill	04/18/89	Didrex 50mg	100
C763480	refill	05/17/89	Didrex 50mg	100
C770330	07/03/89	07/03/89	Didrex 50mg	100
C770330	refill	07/24/89	Didrex 50mg	100
C770330	refill	08/16/89	Didrex 50mg	100
C775632	09/11/89	09/11/89	Didrex 50mg	100
C775632	refill	10/02/89	Didrex 50mg	100
C775632	refill	10/23/89	Didrex 50mg	100
C775632	refill	11/13/89	Didrex 50mg	100
C784556	unknown	12/27/89	Didrex 50mg	42
C787009	01/03/90	01/23/90	Didrex 50mg	42
C787009	refill	02/14/90	Didrex 50mg	42
C787009	refill	03/01/90	Didrex 50mg	42
C791243	03/12/90	03/12/90	Didrex 50mg	100
C797095	05/19/90	05/19/90	Didrex 50mg	42
C798990	06/09/90	06/09/90	Didrex 50mg	42
C800140	06/23/90	06/23/90	Didrex 50mg	42
C802230	07/20/90	07/20/90	Didrex 50mg	42
C804098	08/13/90	08/13/90	Didrex 50mg	42

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code (as was in effect prior to July 1, 1996).

- (6) James N. Murphy as the Responsible Pharmacist did, on or about the following dates, intentionally make and/or knowingly possess false or forged prescriptions, to wit: James N. Murphy and/or pharmacists under his control dispensed drugs pursuant to the following prescriptions, and maintained them in the files of the pharmacy, which were not written for a legitimate medical purpose:

<u>Rx No.</u>	<u>Date Written</u>	<u>Dispensed</u>	<u>Drug</u>	<u>Quantity</u>
C742981	07/15/88	07/15/88	Didrex 50mg	100
C742981	refill	08/01/88	Didrex 50mg	100
C747152	09/13/88	09/13/88	Tenuate Dospan 75mg	35
C751418	11/04/88	11/04/88	Phentermine 30mg	30
C751418	refill	11/18/88	Phentermine 30mg	30
C751418	refill	12/05/88	Phentermine 30mg	30
C751418	refill	01/16/89	Phentermine 30mg	30
C758427	01/30/89	01/30/89	Didrex 50mg	100
C758427	refill	02/13/89	Didrex 50mg	100
C758427	refill	03/01/89	Didrex 50mg	100
C758427	refill	03/20/89	Didrex 50mg	100
C765314	04/28/89	04/28/89	Didrex 50mg	42
C765314	refill	05/12/89	Didrex 50mg	42
C765314	refill	06/01/89	Didrex 50mg	42
C765314	refill	06/12/89	Didrex 50mg	42
C765314	refill	06/24/89	Didrex 50mg	42

C765314	refill	07/18/89	Didrex 50mg	42
C772830	08/04/89	08/05/89	Didrex 50mg	100
C772830	refill	08/28/89	Didrex 50mg	100
C772830	refill	09/21/89	Didrex 50mg	100
C778324	10/13/89	10/13/89	Didrex 50mg	100
C778324	refill	11/04/89	Didrex 50mg	100
C778324	refill	11/25/89	Didrex 50mg	100
C778324	refill	12/18/89	Didrex 50mg	100
C785562	01/03/90	01/08/90	Didrex 50mg	100
C785562	refill	02/02/90	Didrex 50mg	100
C785562	refill	02/22/90	Didrex 50mg	100
C792515	03/27/90	03/27/90	Didrex 50mg	100
C795789	05/02/90	05/04/90	Didrex 50mg	42
C796879	05/16/90	05/16/90	Didrex 50mg	42
C798022	05/30/90	05/30/90	Didrex 50mg	42
C801494	07/11/90	07/11/90	Didrex 50mg	42

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code (as was in effect prior to July 1, 1996).

- (7) James N. Murphy as the Responsible Pharmacist did, on or about the following dates, intentionally make and/or knowingly possess false or forged prescriptions, to wit: James N. Murphy and/or a pharmacist under his control dispensed drugs pursuant to the following prescriptions, and maintained them in the files of the pharmacy, which were not written for a legitimate medical purpose:

<u>Rx No.</u>	<u>Date Written</u>	<u>Dispensed</u>	<u>Drug</u>	<u>Quantity</u>
N770646	06/27/89	07/07/89	Desoxyn 5mg	100
N773538	08/15/89	08/15/89	Desoxyn 5mg	50
N774921	08/21/89	09/01/89	Desoxyn 5mg	100
N777325	09/18/89	10/02/89	Desoxyn 5mg	100
N780040	10/16/89	11/06/89	Desoxyn 5mg	100
N782599	11/13/89	12/05/89	Desoxyn 5mg	100
N786181	01/08/90	01/15/90	Desoxyn 5mg	100
N788796	02/06/90	02/12/90	Desoxyn 5mg	100
N791510	03/15/90	03/15/90	Biphetamine 12.5mg	30
C797849	05/08/90	05/29/90	Didrex 50mg	42
C799059	06/05/90	06/11/90	Didrex 50mg	42
C800930	07/03/90	07/03/90	Didrex 50mg	42
C804188	08/14/90	08/14/90	Didrex 50mg	42

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code (as was in effect prior to July 1, 1996).

CONCLUSION OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (4) through (7) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.25 of the Ohio Revised Code, the State Board of Pharmacy hereby directs the Executive Director to issue a written warning to James N. Murphy.

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mrs. Adelman and approved by the Board (Aye-7/Nay-0/Abstain-1[Lamping]).

RES. 97-134 Mr. Cavendish moved that the Board not make any finding of fact regarding the allegations enumerated in the Notice of Opportunity for a Hearing issued to Kenwood Pharmacy, Ohio Terminal Distributor of Dangerous Drugs No. 02-0183300, and adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-960904-012)

In The Matter Of:

KENWOOD PHARMACY
c/o James Murphy, R.Ph.
7677 Montgomery Road
Cincinnati, Ohio 45236
(T.D. No. 02-0183300)

INTRODUCTION

THE MATTER OF KENWOOD PHARMACY CAME TO HEARING ON MARCH 6, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

KENWOOD PHARMACY WAS REPRESENTED BY WARREN J. RITCHIE, 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, Ohio State Board of Pharmacy
- (2) Michael E. Cluxton, Ohio State Board of Pharmacy
- (3) Charles Konkus; Loveland, Ohio
- (4) Cheryl Rooks, formerly with the Ohio State Board of Pharmacy
- (5) Robert H. Amiet, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) James N. Murphy, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter of James N. Murphy dated September 4, 1996.
- (2) Exhibit 1A--Notice of Opportunity letter of Kenwood Pharmacy dated September 4, 1996.
- (3) Exhibit 1B--Hearing Request letter dated September 19, 1996.
- (4) Exhibit 1C--Hearing Schedule letter dated September 24, 1996.
- (5) Exhibit 1D--Amendment Notice of James N. Murphy dated October 4, 1996.
- (6) Exhibit 1E--Amendment Notice of Kenwood Pharmacy dated October 4, 1996.
- (7) Exhibit 1F--Renewal Application for Pharmacist License, No. 03-3-07899, for a license to practice pharmacy in Ohio from September 15, 1996, to September 15, 1997, of James N. Murphy dated June 29, 1996.
- (8) Exhibit 1G--Two-page Application for Registration as a Terminal Distributor of Dangerous Drugs of Kenwood Pharmacy dated November 27, 1982; Application for Registration as

a Terminal Distributor of Dangerous Drugs of Kenwood Pharmacy dated January 28, 1982, and Supplement Application for Registration as a Terminal Distributor of Dangerous Drugs; and thirteen Renewal Applications for Annual License as a Terminal Distributor of Kenwood Pharmacy for the years of 1984 through 1996.

- (9) Exhibit 2--Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated February 7, 1983.
- (10) Exhibit 3--Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated September 4, 1985.
- (11) Exhibit 4--Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated March 28, 1990, with attached letter from James N. Murphy, not dated, and letter from Jamie Tenbrink Knight dated April 3, 1990.
- (12) Exhibit 4A--Two-page Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated April 2, 1990.
- (13) Exhibit 5--Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated November 30, 1990.
- (14) Exhibit 5A--Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated January 9, 1991; pink sheet copy of Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated January 9, 1991; and four-page policy for Extemporaneous Preparation of Pharmacy Products.
- (15) Exhibit 5B--Copy of three-page Dangerous Drug Distributor Inspection Report of Kenwood Pharmacy dated June 6, 1995.
- (16) Exhibit 5C--Copy of letter from Jim (sic James N. Murphy) dated June 30, 1995; copy of 3PM computer printout; copy of letter from Jane Ertzbischoff dated June 27, 1995; copy of response to pink sheet of Kenwood Pharmacy; copy of "Policy for Pharmacist Record Keeping" of Kenwood Pharmacy, not dated; copy of "Policy for Patient Counseling" of Kenwood Pharmacy, not dated; copy of Kenwood Pharmacy Patient Information Leaflet; copy of Kenwood Pharmacy Prescription Receipt; copy of Kenwood Pharmacy Universal Signature Log; copy of explanation regarding 3PM computer software of Jim (sic James N. Murphy); copy of Policy for Sale of Exempt Narcotics of Kenwood Pharmacy; and copy of Policy for Class II Narcotics of Kenwood Pharmacy.
- (17) Exhibit 6--Sealed Record-Prescription No. N266693.
- (18) Exhibit 7--Sealed Record-Prescription No. N208865.
- (19) Exhibit 8--Sealed Record-Prescription No. N266296.
- (20) Exhibit 9--Sealed Record-Prescription No. N232559.
- (21) Exhibit 10--Sealed Record-Prescription No. N208837.
- (22) Exhibit 11--Sealed Record-Prescription No. N232288.
- (23) Exhibit 12--Sealed Record-Prescription No. N208672.
- (24) Exhibit 13--Sealed Record-Original and Telephone Prescription No. N265993.
- (25) Exhibit 14--Sealed Record-Prescription No. N266037.
- (26) Exhibit 15--Sealed Record-Prescription No. N266030.
- (27) Exhibit 16--Sealed Record-Prescription No. N265987.
- (28) Exhibit 17--Sealed Record-Prescription No. N265973.
- (29) Exhibit 18--Sealed Record-Prescription No. N266540.
- (30) Exhibit 19--Sealed Record-Kenwood Pharmacy computer printout of Prescription and Refill Register dated from May 1, 1995, through June 5, 1995.
- (31) Exhibit 20--Sealed Record-Copy of four pages from the Record of Sales of Exempt Narcotic Preparations booklet of Kenwood Pharmacy dated from April 9, 1993, through May 12, 1994.
- (32) Exhibit 20A--Sealed Record-Copy of one page from the Record of Sales of Exempt Narcotic Preparations booklet of Kenwood Pharmacy dated from December 22, 1992, through February 5, 1993.
- (33) Exhibit 21--Prescription (Medicaid and Third Party Insurance) Claim Log of Kenwood Pharmacy dated June 1 and 5, 1995.
- (34) Exhibit 22--Sealed Record-Prescription No. N715007.
- (35) Exhibit 23--Sealed Record-Prescription No. N716075.
- (36) Exhibit 24--Sealed Record-Prescription No. N718649.
- (37) Exhibit 25--Sealed Record-Prescription No. N721754.
- (38) Exhibit 26--Sealed Record-Prescription No. N727454.
- (39) Exhibit 27--Sealed Record-Prescription No. N733369.
- (40) Exhibit 28--Sealed Record-Prescription No. 737646.
- (41) Exhibit 29--Sealed Record-Prescription No. N741329.
- (42) Exhibit 30--Sealed Record-Prescription No. N743216.

- (43) Exhibit 31--Sealed Record-Prescription No. N724536.
- (44) Exhibit 32--Sealed Record-Prescription No. N740332.
- (45) Exhibit 33--Sealed Record-Prescription No. C266167.
- (46) Exhibit 34--Sealed Record-Prescription No. 250797.
- (47) Exhibit 35--Sealed Record-Prescription No. 250800.
- (48) Exhibit 36--Sealed Record-Prescription No. 250799.
- (49) Exhibit 37--Introduction to Ohio's Schedules of Controlled Substances dated July 21, 1994; and attached twenty-one-page Ohio's Schedules of Controlled Substances.
- (50) Exhibit 38--Sealed Record-Prescription No. N637424.
- (51) Exhibit 39--Sealed Record-Prescription No. N645675.
- (52) Exhibit 40--Sealed Record-Prescription No. C740837.
- (53) Exhibit 41--Sealed Record-Prescription No. C741784.
- (54) Exhibit 42--Sealed Record-Prescription No. C745216.
- (55) Exhibit 43--Sealed Record-Prescription No. C746117.
- (56) Exhibit 44--Sealed Record-Prescription No. 748466.
- (57) Exhibit 45--Sealed Record-Prescription No. 749915.
- (58) Exhibit 46--Sealed Record-Prescription No. C755000.
- (59) Exhibit 47--Sealed Record-Prescription No. C756180.
- (60) Exhibit 48--Sealed Record-Prescription No. C763480.
- (61) Exhibit 48A--Sealed Record-Kenwood Pharmacy Record of Prescriptions for James P. Miller dated from May 1, 1990, to April 24, 1991; and two-page Kenwood Pharmacy Record of Prescriptions for James P. Miller dated from January 1, 1987, to April 2, 1990.
- (62) Exhibit 49--Sealed Record-Prescription No. C770330.
- (63) Exhibit 50--Sealed Record-Prescription No. C775632.
- (64) Exhibit 51--Sealed Record-Prescription No. C784556.
- (65) Exhibit 52--Sealed Record-Prescription No. C787009.
- (66) Exhibit 53--Sealed Record-Prescription No. C791243.
- (67) Exhibit 54--Sealed Record-Prescription No. C797095.
- (68) Exhibit 55--Sealed Record-Prescription No. C798990.
- (69) Exhibit 56--Sealed Record-Prescription No. C800140.
- (70) Exhibit 57--Sealed Record-Prescription No. C802230.
- (71) Exhibit 58--Sealed Record-Prescription No. C804098.
- (72) Exhibit 59--Sealed Record-Prescription No. C742981.
- (73) Exhibit 59A--Sealed Record-Two-page Kenwood Pharmacy Record of Prescriptions for Sue Miller dated from January 1, 1987, to April 2, 1990; and Kenwood Pharmacy Record of Prescriptions for Sue Miller dated from May 1, 1990, to April 24, 1991.
- (74) Exhibit 60--Sealed Record-Prescription No. C747152.
- (75) Exhibit 61--Sealed Record-Prescription No. C751418.
- (76) Exhibit 62--Sealed Record-Prescription No. C758427.
- (77) Exhibit 63--Sealed Record-Prescription No. C765314.
- (78) Exhibit 64--Sealed Record-Prescription No. C772830.
- (79) Exhibit 65--Sealed Record-Prescription No. C778324.
- (80) Exhibit 66--Sealed Record-Prescription No. C785562.
- (81) Exhibit 67--Sealed Record-Prescription No. C792515.
- (82) Exhibit 68--Sealed Record-Prescription No. C795789.
- (83) Exhibit 69--Sealed Record-Prescription No. C796879.
- (84) Exhibit 70--Sealed Record-Prescription No. C798022.
- (85) Exhibit 71--Sealed Record-Prescription No. C801494.
- (86) Exhibit 72--Sealed Record-Prescription No. N770646.
- (87) Exhibit 72A--Sealed Record-Two-page Kenwood Pharmacy Record of Prescriptions for Florette Doepker dated from May 1, 1990, to April 24, 1991.
- (88) Exhibit 73--Sealed Record-Prescription No. N773538.
- (89) Exhibit 74--Sealed Record-Prescription No. N774921.
- (90) Exhibit 75--Sealed Record-Prescription No. N777325.
- (91) Exhibit 76--Sealed Record-Prescription No. N780040.
- (92) Exhibit 77--Sealed Record-Prescription No. N782599.
- (93) Exhibit 78--Sealed Record-Prescription No. N786181.
- (94) Exhibit 79--Sealed Record-Prescription No. N788796.
- (95) Exhibit 80--Sealed Record-Prescription No. N791510.
- (96) Exhibit 81--Sealed Record-Prescription No. C797849.
- (97) Exhibit 82--Sealed Record-Prescription No. C799059.
- (98) Exhibit 83--Sealed Record-Prescription No. C800930.

- (99) Exhibit 84--Sealed Record-Prescription No. C804188.
- (100) Exhibit 85--Sealed Record-Prescription No. C791551.
- (101) Exhibit 86--Sealed Record-Prescription No. N710897.
- (102) Exhibit 87--Sealed Record-Prescription No. N729842.
- (103) Exhibit 88--Handwritten statement of Janlyn Pugh signed and notarized on June 27, 1990.
- (104) Exhibit 89--Handwritten statement of Charles R. Konkus signed and notarized on June 21, 1990.
- (105) Exhibit 90--Handwritten statement of Todd McFarland signed and notarized on June 27, 1990.
- (106) Exhibit 95--Copy of page 1608 of the 1988 Physicians' Desk Reference.
- (107) Exhibit 96--Copy of pages 513 and 514 of the 1988 Physicians' Desk Reference.
- (108) Exhibit 97--Copy of pages 1605 and 1606 of the 1988 Physicians' Desk Reference.
- (109) Exhibit 98--Copy of pages 842 and 843 of the 1988 Physicians' Desk Reference.
- (110) Exhibit 99--Copy of pages 2124 and 2125 of the 1988 Physicians' Desk Reference.
- (111) Exhibit 100--Copy of page 1176 of the 1988 Physicians' Desk Reference.
- (112) Exhibit 101--Copy of page 1126 of the 1988 Physicians' Desk Reference.
- (113) Exhibit 102--Copy of pages 725 and 726 of the 1988 Physicians' Desk Reference.
- (114) Exhibit 103--Copy of six-page *Ohio State Board of Pharmacy News* dated February, 1987.

Respondent's Exhibits:

- (1) Exhibit R1A--Copy of James N. Murphy Profile dated March 6, 1997.
- (2) Exhibit R1B--Copy of two pictures showing outside storefront of Kenwood Pharmacy.
- (3) Exhibit R1C--Copy of picture showing outside storefront of Kenwood Pharmacy.
- (4) Exhibit R1D--Copy of picture showing road sign of Kenwood Pharmacy.
- (5) Exhibit R1E--Copy of picture showing the inner pharmacy counter of Kenwood Pharmacy.
- (6) Exhibit R1F--Copy of picture showing inside of Kenwood Pharmacy store.
- (7) Exhibit R1G--Copy of picture showing the outer pharmacy counter of Kenwood Pharmacy.
- (8) Exhibit R1H--Copy of picture showing pharmacy counter of Kenwood Pharmacy and, specifically, a plaque from the National Association of Retail Druggists.
- (9) Exhibit R1I--Copy of plaque of James N. Murphy for Preceptor of the Year given by the University of Cincinnati, College of Pharmacy, Class of 1989.
- (10) Exhibit R1J--Copy of ten-page "Ohio State Board of Pharmacy Summary of Requirements" titled *The Legal Practice of Pharmacy*, date unknown; copy of "Ohio State Board of Pharmacy Compliance Bulletin 96-003" regarding Redux™ (dexfenfluramine), dated June 17, 1996; and copy of three-page "Ohio State Board of Pharmacy Summary of Laws and Rules" titled *Drugs Prescribed by Optometrists* dated May 15, 1996.
- (11) Exhibit R1K--Copy of four-page *Ohio State Board of Pharmacy News* dated August, 1991.
- (12) Exhibit R1L--Copy of four-page *Ohio State Board of Pharmacy News* dated August, 1984.
- (13) Exhibit R1M--Copy of four-page *Ohio State Board of Pharmacy News* dated November, 1984.
- (14) Exhibit R1Q--Copy of letter from Nancy Kirkman, not dated.
- (15) Exhibit R3A--Copy of Kenwood Pharmacy "Policy for Patient Counseling", not dated.
- (16) Exhibit R3B--Copy of Kenwood Pharmacy Patient Information Leaflet for Prescription No. 270231.
- (17) Exhibit R3C--Copy of Kenwood Pharmacy Prescription Receipt.
- (18) Exhibit R3D--Copy of sign stating "attention, all pharmacy personnel, counseling the patient . . .", not dated.
- (19) Exhibit R3E--Copy of sign stating "attention, Our pharmacists will be happy to speak to you . . .", not dated.
- (20) Exhibit R3F--Copy of Kenwood Pharmacy Universal Signature Log.
- (21) Exhibit R3G--Three copies of Certificate of Continuing Pharmaceutical Education Participation of James N. Murphy numbered 702-000-95-030-H03 dated September 28, 1996; and copy of cover of program booklet titled "Legal Considerations in Contemporary Pharmacy Practice - OBRA '90".

- (22) Exhibit R4A--Copy of "Ohio State Board of Pharmacy Compliance Bulletin No. 93-002" regarding Compounding of Prescriptions/Manufacturing.
- (23) Exhibit R4B--Copy of four-page *Ohio State Board of Pharmacy News* dated November, 1993.
- (24) Exhibit R4C--Copy of DEA Form 222, No. 861033501, of Mark E. Grosinger, D.O. dated June 19, 1987.
- (25) Exhibit R4D--Copy of DEA Form 222, No. 861033502, of Mark E. Grosinger, D.O. dated September 22, 1987.
- (26) Exhibit R4E--Copy of DEA Form 222, No. 871995463, of George R. Lanz, D.D.S. dated July 19, 1988.
- (27) Exhibit R4F--Copy of DEA Form 222, No. 871995462, of George R. Lanz, D.D.S. dated November 23, 1987.
- (28) Exhibit R5C--Copy of six-page *Ohio State Board of Pharmacy News* dated February, 1995.
- (29) Exhibit R6A--Copy of prescriptions numbered 247894 and 247895.
- (30) Exhibit R6B--Copy of prescriptions numbered 247899 and 247898.
- (31) Exhibit R6C--Copy of prescriptions numbered 247896 and 247900.
- (32) Exhibit R6D--Copy of Ohio Valley Residential Services Medication Review of Linda Counts dated December 12, 1994.
- (33) Exhibit R 8; 9; 10; 11C--Affidavit of Frank Clement, M.D. signed and notarized on March 3, 1997.
- (34) Exhibit R 8; 9; 10; 11D--Copy of four-page *Ohio State Board of Pharmacy News* dated February, 1992.
- (35) Exhibit R12; 13A--Affidavit of H. E. Rissover, M. D. signed and notarized on February 28, 1997; with copies of state's exhibits 72 through 84 attached.

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that James N. Murphy is, and has been during the relevant time periods stated herein, the Responsible Pharmacist at Kenwood Pharmacy, 7677 Montgomery Road, Cincinnati, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) James N. Murphy as the Responsible Pharmacist did, on or about June 6, 1995, and dates immediately preceding, fail to keep accurate records of dangerous drugs and controlled substances received and dispensed by the pharmacy, to wit: Kenwood Pharmacy and its pharmacists committed the following recordkeeping violations:
 - (a) After having been specifically admonished by Board agents for such conduct on February 7, 1983, September 4, 1985, and March 28, 1990, James N. Murphy and/or someone under his control failed to manually initial the following prescriptions: N266693, N208865, N266296, N232559, N208837, N232288, and N208672.
 - (b) After having been specifically admonished by Board agents for such conduct on September 4, 1985, and November 30, 1990, James N. Murphy and/or someone under his control failed to keep proper records from April 12, 1993, through May 12, 1995, of sales of schedule V exempt narcotic preparations in accordance with Section 1306.32 of the Code of Federal Regulations.

Such conduct is in violation of Rule 4729-5-17 of the Ohio Administrative Code (as was in effect prior to January 17, 1997).

- (3) James N. Murphy as the Responsible Pharmacist did, on or about June 6, 1995, and dates immediately preceding, fail to perform patient counseling, to wit: when dis-

pensing medications to patients pursuant to prescriptions, James N. Murphy and/or someone under his control failed to offer patient counseling and failed to properly document the refusal of offers to counsel. Such conduct is in violation of Rule 4729-5-22 of the Ohio Administrative Code.

- (4) James N. Murphy as the Responsible Pharmacist did, on or about December 31, 1984, knowingly sell a controlled substance in an amount greater than three times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: James N. Murphy and/or a pharmacist under his control sold 100 units of Quaalude 300mg, a schedule I controlled substance, pursuant to prescription number N645675. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code (as was in effect prior to July 1, 1996).
- (5) James N. Murphy as the Responsible Pharmacist did, on or about the following dates, intentionally make and/or knowingly possess false or forged prescriptions, to wit: James N. Murphy and/or a pharmacist under his control dispensed drugs pursuant to the following prescriptions, and maintained them in the files of the pharmacy, which were not written for a legitimate medical purpose:

<u>Rx No.</u>	<u>Date Written</u>	<u>Dispensed</u>	<u>Drug</u>	<u>Quantity</u>
C740837	06/15/88	06/15/88	Didrex 50mg	100
C741784	06/15/88	06/29/88	Didrex 50mg	100
C745216	08/16/88	08/16/88	Didrex 50mg	100
C746117	08/16/88	08/30/88	Didrex 50mg	100
748466	09/30/88	09/30/88	Bontril PDM 35mg	100
749915	09/30/88	10/18/88	Bontril PDM 35mg	100
C755000	12/19/88	12/19/88	Didrex 50mg	100
C756180	12/19/88	01/03/89	Didrex 50mg	100
C763480	04/04/89	04/04/89	Didrex 50mg	100
C763480	refill	04/18/89	Didrex 50mg	100
C763480	refill	05/17/89	Didrex 50mg	100
C770330	07/03/89	07/03/89	Didrex 50mg	100
C770330	refill	07/24/89	Didrex 50mg	100
C770330	refill	08/16/89	Didrex 50mg	100
C775632	09/11/89	09/11/89	Didrex 50mg	100
C775632	refill	10/02/89	Didrex 50mg	100
C775632	refill	10/23/89	Didrex 50mg	100
C775632	refill	11/13/89	Didrex 50mg	100
C784556	unknown	12/27/89	Didrex 50mg	42
C787009	01/03/90	01/23/90	Didrex 50mg	42
C787009	refill	02/14/90	Didrex 50mg	42
C787009	refill	03/01/90	Didrex 50mg	42
C791243	03/12/90	03/12/90	Didrex 50mg	100
C797095	05/19/90	05/19/90	Didrex 50mg	42
C798990	06/09/90	06/09/90	Didrex 50mg	42
C800140	06/23/90	06/23/90	Didrex 50mg	42
C802230	07/20/90	07/20/90	Didrex 50mg	42
C804098	08/13/90	08/13/90	Didrex 50mg	42

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code (as was in effect prior to July 1, 1996).

- (6) James N. Murphy as the Responsible Pharmacist did, on or about the following dates, intentionally make and/or knowingly possess false or forged prescriptions, to wit: James N. Murphy and/or pharmacists under his control dispensed drugs pursuant to the following prescriptions, and maintained them in the files of the pharmacy, which were not written for a legitimate medical purpose:

<u>Rx No.</u>	<u>Date Written</u>	<u>Dispensed</u>	<u>Drug</u>	<u>Quantity</u>
C742981	07/15/88	07/15/88	Didrex 50mg	100
C742981	refill	08/01/88	Didrex 50mg	100

C747152	09/13/88	09/13/88	Tenuate Dospan 75mg	35
C751418	11/04/88	11/04/88	Phentermine 30mg	30
C751418	refill	11/18/88	Phentermine 30mg	30
C751418	refill	12/05/88	Phentermine 30mg	30
C751418	refill	01/16/89	Phentermine 30mg	30
C758427	01/30/89	01/30/89	Didrex 50mg	100
C758427	refill	02/13/89	Didrex 50mg	100
C758427	refill	03/01/89	Didrex 50mg	100
C758427	refill	03/20/89	Didrex 50mg	100
C765314	04/28/89	04/28/89	Didrex 50mg	42
C765314	refill	05/12/89	Didrex 50mg	42
C765314	refill	06/01/89	Didrex 50mg	42
C765314	refill	06/12/89	Didrex 50mg	42
C765314	refill	06/24/89	Didrex 50mg	42
C765314	refill	07/18/89	Didrex 50mg	42
C772830	08/04/89	08/05/89	Didrex 50mg	100
C772830	refill	08/28/89	Didrex 50mg	100
C772830	refill	09/21/89	Didrex 50mg	100
C778324	10/13/89	10/13/89	Didrex 50mg	100
C778324	refill	11/04/89	Didrex 50mg	100
C778324	refill	11/25/89	Didrex 50mg	100
C778324	refill	12/18/89	Didrex 50mg	100
C785562	01/03/90	01/08/90	Didrex 50mg	100
C785562	refill	02/02/90	Didrex 50mg	100
C785562	refill	02/22/90	Didrex 50mg	100
C792515	03/27/90	03/27/90	Didrex 50mg	100
C795789	05/02/90	05/04/90	Didrex 50mg	42
C796879	05/16/90	05/16/90	Didrex 50mg	42
C798022	05/30/90	05/30/90	Didrex 50mg	42
C801494	07/11/90	07/11/90	Didrex 50mg	42

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code (as was in effect prior to July 1, 1996).

- (7) James N. Murphy as the Responsible Pharmacist did, on or about the following dates, intentionally make and/or knowingly possess false or forged prescriptions, to wit: James N. Murphy and/or a pharmacist under his control dispensed drugs pursuant to the following prescriptions, and maintained them in the files of the pharmacy, which were not written for a legitimate medical purpose:

<u>Rx No.</u>	<u>Date Written</u>	<u>Dispensed</u>	<u>Drug</u>	<u>Quantity</u>
N770646	06/27/89	07/07/89	Desoxyn 5mg	100
N773538	08/15/89	08/15/89	Desoxyn 5mg	50
N774921	08/21/89	09/01/89	Desoxyn 5mg	100
N777325	09/18/89	10/02/89	Desoxyn 5mg	100
N780040	10/16/89	11/06/89	Desoxyn 5mg	100
N782599	11/13/89	12/05/89	Desoxyn 5mg	100
N786181	01/08/90	01/15/90	Desoxyn 5mg	100
N788796	02/06/90	02/12/90	Desoxyn 5mg	100
N791510	03/15/90	03/15/90	Biphedamine 12.5mg	30
C797849	05/08/90	05/29/90	Didrex 50mg	42
C799059	06/05/90	06/11/90	Didrex 50mg	42
C800930	07/03/90	07/03/90	Didrex 50mg	42
C804188	08/14/90	08/14/90	Didrex 50mg	42

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code (as was in effect prior to July 1, 1996).

ACTION OF THE BOARD

The Board is of the opinion that Kenwood Pharmacy has adequately addressed the deficiencies noted herein; therefore, the State Board of Pharmacy hereby takes no action in the matter of Kenwood Pharmacy.

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Hanna and approved by the Board (Aye-7/Nay-0/Abstain-1[Lamping]).

The Board reviewed administrative reports and correspondence not requiring official action by the Board.

10:16 a.m.

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing pursuant to Ohio Revised Code Chapters 119. and 4729. in the matter of Robert G. Wilson, Poland, Ohio.

11:15 a.m.

The hearing was concluded and Mrs. Plant moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony presented during the hearing in the matter of Robert G. Wilson and to consider the investigation of a registrant or licensee of the Board. The motion was seconded by Mr. Cavendish and a roll call vote was conducted by President Neuber as follows: Adelman-Yes, Cavendish-Yes, Hanna-Yes, Lamping-Yes, Littlejohn-Yes, Maslak-Yes, Plant-Yes, and Repke-Yes.

11:34 a.m.

RES. 97-135

The Executive Session was concluded and the meeting opened to the public. Mr. Maslak moved that the Board deny the application of Robert G. Wilson for licensure by examination and adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-960816-009)

In The Matter Of:

ROBERT G. WILSON
2760 Poland Village Blvd.
Poland, Ohio 44514
(D.O.B. 2/11/53)

INTRODUCTION

THE MATTER OF ROBERT G. WILSON CAME TO HEARING ON MARCH 7, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

ROBERT G. WILSON WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) George Pavlich, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) David Boyer, Pharmacists Rehabilitation Organization
- (2) Robert G. Wilson, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter dated August 16, 1996.
- (2) Exhibit 1A--Hearing Request letter dated September 8, 1996.
- (3) Exhibit 1B--Hearing Schedule letter dated September 13, 1996.
- (4) Exhibit 2--Application for Examination as a Pharmacist of Robert G. Wilson signed and notarized on May 14, 1996, with the following attachments: two-page explanation to Section 4 of the application; and two-page copy of transcript of grades from the Ohio Northern University of Robert George Wilson reported January 28, 191 (sic).
- (5) Exhibit 3--Pharmacist File Front Sheet of Robert G. Wilson showing original date of registration as August 4, 1976, and revocation date as March 14, 1994.
- (6) Exhibit 4--Two-page Order of the State Board of Pharmacy in the matter of Robert G. Wilson dated July 6, 1989.
- (7) Exhibit 5--Copy of letter from Franklin Z. Wickham dated July 6, 1989.
- (8) Exhibit 6--Six-page Order of the State Board of Pharmacy in the matter Robert G. Wilson dated November 4, 1991.
- (9) Exhibit 7--Three-page Order of the State Board of Pharmacy in the matter of Robert G. Wilson dated April 30, 1992.
- (10) Exhibit 8--Three-page Summary Suspension Order of Robert G. Wilson dated April 29, 1993.
- (11) Exhibit 9--Ten-page Order of the State Board of Pharmacy in the matter of Robert G. Wilson dated March 14, 1994.

Respondent's Exhibits:

- (1) Exhibit A--Two-page copy of Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of Robert Wilson dated January 1, 1997.
- (2) Exhibit B--Copies of twenty-two pages of AA/NA attendance sheets of Robert G. Wilson dated from June 12, 1993, through March 3, 1997.
- (3) Exhibit C--Copies of twelve urine drug screen reports of Robert Wilson dated as follows: July 31, 1993; August 30, 1993; October 19, 1993; November 27, 1993; January 25, 1994; March 22, 1994; March 23, 1995; August 25, 1995; January 19, 1996; February 13, 1996; June 4, 1996; and December 8, 1996; and copies of two chain of custody requests dated August 19, 1996; and February 12, 1997.
- (4) Exhibit D--Copy of two-page letter from Robert G. Wilson dated June 26, 1993; copy of three-page letter from Robert G. Wilson, not signed, dated September 28, 1993; copy of letter from Robert G. Wilson dated December 30, 1993; copy of letter from Robert G. Wilson dated March 28, 1994; copy of letter from Robert G. Wilson dated January 15, 1995; copy of letter from Robert G. Wilson dated April 6, 1995; copy of letter from Robert G. Wilson dated July 15, 1995; copy of letter from Robert G. Wilson dated October 23, 1995; copy of letter from Robert G. Wilson dated January 9, 1996; copy of letter from Robert G. Wilson dated March 31, 1996; copy of letter from Robert G. Wilson dated June 26, 1996; copy of letter from Robert G. Wilson dated September 28, 1996; and copy of letter from Robert G. Wilson dated December 24, 1996.
- (5) Exhibit E--Copies of fourteen pages consisting of thirty-five certificates of continuing pharmaceutical education numbered and dated as follows: 401-000-96-012-H01 and 401-000-96-006-H01 dated February 6, 1997; 679-401-94-018 dated August 9, 1996; 401-

000-96-015-H01 dated February 6, 1997; 679-401-95-005 dated June 9, 1996; 401-000-96-004-H01 dated September 6, 1996; 401-000-96-014-H04 dated January 29, 1997; 401-000-96-005-H01 dated January 29, 1997 (duplicate); 401-000-96-008-H01 dated January 29, 1997 (duplicate); 401-000-96-011-H02 dated January 29, 1997 (duplicate); 401-000-96-010-H01 dated January 29, 1997 (duplicate); 401-000-96-014-H04 dated January 29, 1997 (duplicate); 401-000-97-002-H01 dated February 14, 1997; 401-000-96-007-H01 dated January 24, 1997; 692-424-94-02 (sic) dated January 14, 1997; 692-424-94-0 (sic) dated January 15, 1997; 424-000-95-02 (sic) dated January 14, 1997; 692-424-94-00 (sic) dated January 14, 1997; 692-424-94-0 (sic) dated January 14, 1997; 692-424-94-02 (sic) dated January 15, 1997; 692-424-94-009 dated July 19, 1996; 692-424-94-006 dated July 19, 1996; 692-424-94-004 dated July 19, 1996; 692-424-93-011 dated July 19, 1996; 692-424-93-012 dated July 19, 1996; 692-424-93-009 dated July 19, 1996; 692-424-93-010 dated July 19, 1996; 692-424-93-014 dated July 19, 1996; 680-026-94-027 dated December 29, 1995; 424-000-96-002-H04 dated February 5, 1997; 424-000-95-012 dated June 13, 1996; 682-327-94-205 dated January 31, 1997; 688-155-94-029 dated February 10, 1997; and 180-316-95-011 dated January 16, 1997.

- (6) Exhibit F--Copy of letter from P. J. Champion dated February 27, 1997; copy of letter from Eugene O'Brien dated February 24, 1997; copy of letter from W. Clare Reese dated February 13, 1997; copy of letter from Joseph C. Salmen dated February 22, 1997; copy of letter from Robert C. Locklear dated February 9, 1997; copy of letter from Scott A. Bowles dated February 12, 1997; copy of letter from W. Stephen Meloy dated February 19, 1997; copy of letter from Delores E. Kruizevisor dated February 12, 1997; copy of letter from Patricia S. McCormick dated February 15, 1997; copy of letter from Carol M. Noble dated February 17, 1997; copy of letter from Cynthia L. Hawes dated February 16, 1997; and copy of letter from Joseph P. Colangelo dated February 25, 1997.
- (7) Exhibit G--Copies of four Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheets of Robert Wilson dated April 10, 1995; July 9, 1996; October 8, 1996; and January 10, 1997.
- (8) Exhibit H--Five pages of copies consisting of nine Certificates of Appreciation of Bob W. dated February, 1995; May 22, 1995; May 3, 1995; February 28, 1995; December 12, 1995; June 11, 1996; July 21, 1996; February 6, 1996; and October 19, 1995;
- (9) Exhibit I--Copy of payroll deposit receipt of Robert G. Wilson dated February 21, 1997; and Pay Statement for period ending October 29, 1994.

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 Robert G. Wilson submitted an application for examination as a pharmacist on May 16, 1996.
- (2) Records further indicate that Robert G. Wilson was originally licensed to practice pharmacy in the state of Ohio on August 4, 1976.
- (3) On or about July 6, 1989, the Board found the following to be fact:
 - (a) Robert G. Wilson was notified on December 5, 1988, by letter, of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing.
 - (b) As demonstrated by return receipt of December 8, 1988, Robert G. Wilson received the letter of December 5, 1988, informing him of the allegations regarding his continuing pharmacy education submitted for renewal and his rights.
 - (c) Robert G. Wilson did not respond in any manner to the letter of December 5, 1988, and did not request a hearing in this matter.
 - (d) Robert G. Wilson did not continue his pharmacy education in accordance with Chapter 4729-7 of the Ohio Administrative Code.

- (e) Robert G. Wilson did not submit the required 4.5 continuing education units needed for renewal of his pharmacist license.

For these reasons, the Board concluded that Robert G. Wilson failed to meet the requirements for renewal of his identification card as set forth in Section 4729.12 of the Ohio Revised Code and, therefore, such application was denied. However, another application was submitted and a license to practice pharmacy issued on May 3, 1989.

- (4) On or about November 4, 1991, the Ohio State Board of Pharmacy found the following to be fact:
 - (a) *(This action of the Board was based upon a criminal conviction and/or the underlying facts upon which a criminal conviction was based.)*
 - (b) Robert G. Wilson's license to practice pharmacy in the state of Vermont was revoked on or about March 4, 1987, for . . . *(This action of the Board was based upon a criminal conviction and/or the underlying facts upon which a criminal conviction was based)* . . . which, pursuant to the laws of the state of Vermont, "reduced public confidence in the profession of pharmacy; for becoming addicted to narcotics which endangered the public health, safety and welfare; and for violating society's trust to protect the populace from the dangers of drug abuse and addiction and other hazards inherent in the powerful agents of drugs which he dispenses as a pharmacist."
 - (c) Robert G. Wilson did, on or about August 13, 1989, and again on or about August 9, 1990, knowingly make false statements when the statements were made with purpose to secure the issuance by the Ohio State Board of Pharmacy of renewal licenses, to wit: on his renewal applications for the years of 1989 and 1990, Robert G. Wilson indicated that he had not been found guilty by any state government agency or convicted (even if expunged) of . . . *(This action of the Board was based upon a criminal conviction and/or the underlying facts upon which a criminal conviction was based)* . . . and actions constituting offenses dealing with drugs and committed in the practice of pharmacy. Such conduct is in violation of Section 2921.13(A)(5) of the Ohio Revised Code.

For these reasons, the Board concluded that Robert G. Wilson was: guilty of . . . *(This action of the Board was based upon a criminal conviction and/or the underlying facts upon which a criminal conviction was based)* . . . ; guilty of dishonesty and unprofessional conduct in the practice of pharmacy; addicted to any abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy; guilty of . . . *(This action of the Board was based upon a criminal conviction and/or the underlying facts upon which a criminal conviction was based)* . . . ; and guilty of willfully violating provisions of Chapter 4729. of the Revised Code. On November 4, 1991, Robert G. Wilson was suspended indefinitely from the practice of pharmacy in Ohio pursuant to the Order of the State Board of Pharmacy, Docket No. D-910530-076; however, the Board would permit Robert G. Wilson to appear for reinstatement of his license after certain conditions had been met.

- (5) On March 4, 1992, Robert G. Wilson appeared before the Board for reinstatement of his license. On or about April 30, 1992, the Board found that Robert G. Wilson had submitted satisfactory evidence that the conditions and requirements, pursuant to the Order of the State Board of Pharmacy, Docket No. D-910530-076, had been met and that he was in compliance with said Order.
- (6) On or about April 30, 1992, Robert G. Wilson's license to practice pharmacy in Ohio was reinstated, pursuant to the Order of the State Board of Pharmacy, Docket No.

D-911211-082. Robert G. Wilson's identification card was placed on probation for a period of five years with the following stipulations:

- (a) Robert G. Wilson was to provide evidence of entering into a contract with the Pharmacists Rehabilitation Organization, Inc., or an equivalent program acceptable to the Board, for a period of five years (from April 30, 1992, through April 30, 1997) with the following stipulations:
 - (i) random, observed urine screens were to be conducted at least every three months, and copies of the results immediately forwarded to the Board of Pharmacy office,
 - (ii) attendance of at least three meetings per week at an AA/NA or a similar support group meeting was required during out-patient and/or during aftercare,
 - (iii) the program was to immediately report to the Board of Pharmacy any violations of the contract.
 - (b) Robert G. Wilson was to submit a copy of the contract to the Board as soon as it had been agreed to by the program.
 - (c) Robert G. Wilson was to submit quarterly progress reports to the Board that included:
 - (i) the written report and documentation provided by the treatment program pursuant to the contract, and
 - (ii) a written description of his progress towards recovery and what he had been doing during the previous three months.
 - (d) Robert G. Wilson was not to serve as a responsible pharmacist during the five-year probation period, through April 30, 1997.
- (7) On April 29, 1993, Robert G. Wilson's license was summarily suspended; and, on or about March 14, 1994, in addition to paragraphs (4), (5), and (6) above, the Board found the following to be fact:
- (a) Robert G. Wilson was addicted to and continued abusing liquor and/or drugs or he was impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: on March 23, 1993, Robert G. Wilson submitted a urine sample for drug screening. Positive results for opiates were detected in his urine. Again, Robert G. Wilson was ordered to submit a urine sample for screening on April 6, 1993; however, knowing that the screen would be positive, Robert G. Wilson refused the order and admitted his addiction/relapse to drugs. Robert G. Wilson admitted to his employer that he had been consuming drugs such as Tylenol #4, Lortab, and/or Vicodin in amounts averaging ten to fifteen units per day since June, 1992. Further, upon advice of his P.R.O. representative, Robert G. Wilson admitted himself into Shepherd Hill Hospital on April 7, 1993, due to his relapse.
 - (b) Robert G. Wilson was in violation of and did not comply with the conditions of probation as set forth in the Order of the State Board of Pharmacy, Docket No. D-911211-082, dated April 30, 1992. Further, Robert G. Wilson did knowingly make false statements when the statements were made with purpose to mislead a public official in performing his official function and to secure the issuance of a license by the Ohio State Board of Pharmacy, to wit: on June 25, 1992, Robert G. Wilson submitted his third quarterly progress report to the Board, pursuant to Order, Docket No. D-911211-082, which states "I am sober and things are doing well". On September 27, 1992, Robert G. Wilson submitted his fourth quarterly

progress report to the Board, pursuant to said Order, which states "On the 29th of September I will have reached 10 months of sobriety and I still enjoy it". On December 29, 1992, Robert G. Wilson submitted his fifth quarterly progress report to the Board, pursuant to said Order, which states "I made it thru Christmas sober". On March 31, 1993, Robert G. Wilson submitted his sixth quarterly progress report to the Board, pursuant to said Order, which states "It bothers me that I was unable to stop, (smoking cigarettes) but I do still have my sobriety. I am proud to say I have been drug and alcohol free for 1 year and 4 months and 2 days."; this report being approximately one week after the positive urinalysis dated March 23, 1993. Robert G. Wilson submitted these reports; yet, on or about April 7, 1993, he admitted to his employer that he had been consuming drugs such as Tylenol #4, Lortab, and/or Vicodin in amounts averaging ten to fifteen units per day since June, 1992. Such conduct was in violation of Sections 2921.13(A)(3) and 2921.13(A)(5) of the Ohio Revised Code.

- (c) Robert G. Wilson did, from on or about May, 1992, to April, 1993, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs belonging to Phar-Mor #177, Austintown, Ohio, beyond the express or implied consent of the owner by committing a theft offense, to wit: Robert G. Wilson stole the following dangerous drugs from Phar-Mor #177:

<u>Drug</u>	<u>Quantity</u>	<u>% of Drug Supply</u>
Tylenol w/Codeine #4	1,372	18.2%
Lortab 7.5mg	1,053	25.7%
Anexsia 7.5mg/650	2,174	19.3%
Vicodin ES 7.5mg	2,487	5.6%

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

- (d) Robert G. Wilson did, on or about May, 1992, to April, 1993, knowingly sell, under the definition of Sections 3719.10(EE) and 4729.02(J) of the Ohio Revised Code, controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: Robert G. Wilson sold the following schedule III controlled substances, without prescriptions and/or without a legitimate medical purpose:

<u>Drug</u>	<u>Quantity</u>	<u>% of Drug Supply</u>
Tylenol w/Codeine #4	1,372	18.2%
Lortab 7.5mg	1,053	25.7%
Anexsia 7.5mg/650	2,174	19.3%
Vicodin ES 7.5mg	2,487	5.6%

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

For these reasons, on or about March 14, 1994, the Ohio State Board of Pharmacy concluded that Robert G. Wilson: guilty of (*This action of the Board was based upon a criminal conviction and/or the underlying facts upon which a criminal conviction was based*); guilty of gross immorality; guilty of dishonesty and unprofessional conduct in the practice of pharmacy; addicted to and abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy; guilty of (*This action of the Board was based upon a criminal conviction and/or the underlying facts upon which a criminal conviction was based*); and guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapters 2925. and 4729. of the Revised Code. Therefore, Robert G. Wilson's license to practice pharmacy in the state of Ohio, No. 03-3-11725, was revoked.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (4) and (7) of the Findings of Fact constitute *(This action of the Board was based upon a criminal conviction and/or the underlying facts upon which a criminal conviction was based)* as provided in Rule 4729-5-04 of the Ohio Administrative Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (4) of the Findings of Fact constitutes *(This action of the Board was based upon a criminal conviction and/or the underlying facts upon which a criminal conviction was based)* as provided in Rule 4729-5-04 of the Ohio Administrative Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3), (4), and (7) of the Findings of Fact constitute not being of good moral character and habits as provided in Paragraph (C) of Rule 4729-5-04 of the Ohio Administrative Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (4) and (7) of the Findings of Fact constitute being addicted to or abusing drugs as provided in Paragraph (D) of Rule 4729-5-04 of the Ohio Administrative Code.
- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3), (4), (6), and (7) of the Findings of Fact constitute having been disciplined by the Ohio State Board of Pharmacy pursuant to Section 4729.16 of the Revised Code as provided in Paragraph (E) of Rule 4729-5-04 of the Ohio Administrative Code.
- (6) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (4) of the Findings of Fact constitutes having been disciplined by any board of pharmacy as provided in Paragraph (F) of Rule 4729-5-04 of the Ohio Administrative Code.

ACTION OF THE BOARD

Pursuant to Section 4729.08 of the Ohio Revised Code, and on the basis of the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby denies the issuance of a certificate of registration or an identification card, and therefore denies the Application for Examination as a Pharmacist submitted by Robert G. Wilson.

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

MOTION CARRIED.

SO ORDERED.

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

RES. 97-136 Mr. Cavendish moved that the Board summarily suspend the license of Kent Schindler, R.Ph. (03-3-08430) for the reason that there is clear and convincing evidence that the continuation of his professional practice and method of distributing controlled substances presents a danger of immediate and serious harm to others. The motion was seconded by Mr. Hanna and approved by the Board (Aye-8/Nay-0).

RES. 97-137 Mr. Hanna moved that the Board propose that Administrative Code Rules 4729-5-24 , 4729-5-31 and 4729-12-09 be amended as follows and that the public hearing be held during the April 1997 Board meeting:

4729-5-24 Prescription copy.

Authorized By: 3719.28, 4729.26; Rule Amplifies: 3719.05, 4729.37

Prior Effective Date(s): 10/01/71, 08/01/84, 07/01/90, 07/01/92, 01/17/97

- (A) A pharmacist may transfer a copy of a prescription; a pharmacist may refill a copy of a prescription; such actions must be in accordance with the following:
- (1) Copies of prescriptions shall be transferred only between pharmacists; copies of prescriptions for controlled substances pursuant to sections 3719.41, 3719.43, and 3719.44 of the Revised Code shall be communicated directly between two pharmacists and shall be transferred only one time.
 - (2) The copy transferred shall be an exact duplicate of the original prescription except that it shall also include:
 - (a) Serial prescription number assigned to the prescription;
 - (b) Name and address (and "D.E.A." number for controlled substance prescriptions) of the pharmacy transferring the copy;
 - (c) Date of issuance of the prescription;
 - (d) Date of original dispensing of the prescription;
 - (e) Original number of refills;
 - (f) Date of last refill;
 - (g) Number of valid refills remaining; and
 - (h) The name of the transferring pharmacist.
 - (3) Copies transferred for non-refillable prescriptions shall be marked on the face of the prescription or orally noted by the transferring pharmacist "For Information Purposes Only" and are not valid prescriptions for the dispensing of drugs.
 - (4) The pharmacist transferring a copy of a prescription must:
 - (a) Cancel the original prescription by writing the word "void" on the face of the prescription;
 - (b) Record on the reverse side of the original written prescription:
 - (i) Date of transfer;
 - (ii) His/her signature; and
 - (iii) When transferring an oral prescription, the name and address (and "D.E.A." number for controlled substance prescriptions) and name of the pharmacist at the receiving pharmacy.
 - (c) Except, if an automated data processing system is being used as an alternate system of recordkeeping for prescriptions pursuant to rules 4729-5-27 and 4729-5-28 of the Administrative Code, copies of prescriptions may be transferred by a pharmacist if the prescription record in the system is invalidated to prevent further dispensing at the original site. The prescription record in the system must contain the date of transfer, name of pharmacist making transfer, and the name

and address of the pharmacy receiving the copy. Also, original written prescriptions for controlled substances must be cancelled as required in paragraphs (A)(4)(a) and (A)(4)(b) of this rule.

- (5) The pharmacist receiving a copy of a prescription must:
 - (a) Exercise reasonable diligence to determine validity of the copy;
 - (b) Reduce an oral prescription to writing by recording all of the information transferred (must include all information required in paragraph (A)(2) of this rule) and write the word "transfer" on the face of the prescription;
 - (c) Record date of transfer on the face of the prescription.
- (B) A prescription copy may be transferred between two pharmacies if the two pharmacies are accessing the same prescription records in a centralized database or pharmacy computers linked in any other manner. The computerized systems must satisfy all information requirements of paragraphs (A)(2) and (A)(4)(c) of this rule. This shall include invalidation of the prescription record in the system to prevent further dispensing at the original site and, if a controlled substance prescription, the cancelling of the original written prescription as required in paragraphs (A)(4)(a) and (A)(4)(b) of this rule. A system must be in place that will allow only authorized access to these computerized prescription records by a pharmacist and indicate on the prescription record when and by whom such access was made.
- (C) A prescription copy may be transferred between two pharmacists by the use of a facsimile machine. This facsimile may be considered to be a copy of a prescription if all information requirements of paragraph (A) of this rule, including invalidation of the original prescription or computer records, are met. A system must be in place that will show on the facsimile positive identification of the transferring and receiving pharmacists which must become a part of the prescription record. Facsimile copies must be recorded in writing pursuant to section 4729.37 of the Revised Code, or stored in such a manner that will allow retention of the prescription record for three years from the date of the last transaction.
- (D) INFORMATION ON A PRESCRIPTION IS THE PROPERTY OF THE PATIENT AND IS INTENDED TO AUTHORIZE THE DISPENSING OF A SPECIFIC AMOUNT OF MEDICATION FOR USE BY THE PATIENT. ORIGINAL COPIES OF PRESCRIPTIONS SHALL BE MAINTAINED BY PHARMACIES FOR THE PURPOSE OF DOCUMENTING THE DISPENSING OF DRUGS TO A PARTICULAR PATIENT.
 - (1) IN THE EVENT THAT THE PHARMACY IS NOT ABLE TO PROVIDE THE MEDICATION WHEN NEEDED BY THE PATIENT PURSUANT TO AN AUTHORIZED REFILL, THE PHARMACIST SHALL, UPON THE REQUEST OF THE PATIENT, TRANSFER THE PRESCRIPTION INFORMATION TO THE PHARMACY DESIGNATED BY THE PATIENT.
 - (2) NO PHARMACY SHALL REFUSE TO TRANSFER INFORMATION ABOUT A PREVIOUSLY DISPENSED PRESCRIPTION TO ANOTHER PHARMACY WHEN REQUESTED BY THE PATIENT. PRESCRIPTION INFORMATION SHALL BE TRANSFERRED IN ACCORDANCE WITH THIS RULE AS SOON AS POSSIBLE IN ORDER TO ASSURE THAT THE PATIENT'S DRUG THERAPY IS NOT INTERRUPTED.

4729-5-31 Criteria for licensure by examination.

Authorized By: 4729.26; Rule Amplifies: 4729.07, 4729.08, 4729.13

Prior Effective Date(s): 02/15/82, 09/01/85, 03/21/88, 07/01/90, 01/26/93, 03/01/94, 09/01/96

- (A) Pursuant to section 4729.07 of the Revised Code:

- (1) The examination shall consist of the "~~National Association of Boards of Pharmacy~~ NORTH AMERICAN PHARMACIST Licensure Examination (~~NABPLEX~~ NAPLEX)" and a jurisprudence examination compiled by the board or the "National Association of Boards of Pharmacy."
- (2) The minimum passing grade for the "~~National Association of Boards of Pharmacy Licensure Examination (NABPLEX)~~" NAPLEX is seventy-five. Any candidate failing to attain a grade of seventy-five on the ~~NABPLEX~~ NAPLEX examination will be required to repeat the ~~NABPLEX~~ NAPLEX examination.
- (3) The minimum passing grade for the jurisprudence examination is seventy-five. Any candidate who fails to receive a grade of seventy-five on the jurisprudence examination will be required to repeat the jurisprudence examination.

(B) Pursuant to section 4729.13 of the Revised Code:

- (1) The examination shall consist of the "~~National Association of Boards of Pharmacy~~ NORTH AMERICAN PHARMACIST Licensure Examination (~~NABPLEX~~ NAPLEX)" and a jurisprudence examination compiled by the board or the "National Association of Boards of Pharmacy."
- (2) The minimum passing grades for renewal of the pharmacist's identification card is a seventy-five on each exam.
 - (a) Any candidate for renewal of an identification card who fails to receive a grade of seventy-five on the jurisprudence examination shall make application and remit the fee established by the board for re-examination.
 - (b) Any candidate for renewal of an identification card who fails to receive a grade of seventy-five on the ~~NABPLEX~~ NAPLEX examination shall make application and remit the fee established by the board for re-examination.

(C) Pursuant to section 4729.08 of the Revised Code:

Applicants for examination and registration as a pharmacist who are graduates of schools or colleges of pharmacy located outside the United States and who are using an approved examination to establish equivalency of their education shall:

- (1) Obtain a grade no lower than seventy-five on the "Foreign Pharmacy Graduate Equivalency Examination (FPGEE)"; and
- (2) Show oral proficiency in English by successful completion of the "Test of Spoken English (TSE)" or its equivalent, pursuant to rule 4729-5-34 of the Administrative Code.

4729-12-09 Exceptions.

Authorized By: 3719.28, 4729.66; Rule Amplifies: 3719.44

Prior Effective Date(s): 08/24/94, 12/15/94, 01/10/96

Pursuant to division (K) of section 3719.44 of the Revised Code, each of the following products containing ephedrine, its salts, its isomers, or the salts of its isomers is declared to be ~~exempt~~ EXCEPTED from classification as a schedule V controlled substance:

- (A) All products that contain the isomer known as pseudoephedrine or its salts, but do not also contain any of the isomer known as ephedrine or its salts.
- (B) "Breathe Easy®" herb tea.

- (C) "Bronkaid® Dual Action" caplets.
- (D) "Hydrosal®" hemorrhoidal ointment.
- (E) "Primatene® Dual Action Formula" tablets.
- (F) "Primatene®" tablets.
- (G) "SNORESTOP™" TABLETS.

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

RES. 97-138 The Board then reached a consensus that the following resolutions would be submitted to the membership of the National Association of Boards of Pharmacy for their consideration at the 93rd Annual Meeting in May of this year:

Provision of Health Care

Whereas, certain third party payers and managed health care plans are implementing programs which interfere with the ability of health care professionals to provide quality care, and

Whereas, many of these programs are based on increasing the profitability of the payer or market share issues rather than quality patient care and positive outcomes, therefore

Be it resolved that NABP work with the other health care professions to ensure that professional practice decisions are those of the health professionals responsible for providing care to the patient, and

Be it further resolved that the health professions seek legislation ensuring that patient health care decisions are those of the health professionals caring for the patient.

Health Care Information Systems

Whereas, certain segments of the health care industry have developed patient health care information systems primarily for marketing and profitability purposes only, and

Whereas, many of these systems do not provide health care professionals with the patient information required to make quality patient care decisions, and

Whereas, such systems make confidential health care information available to persons other than those health professionals caring for the patient, and

Whereas, many patients have unknowingly given their written consent to allow disclosure of their confidential health care information to anyone for any purpose, therefore

Be it resolved that the health professionals work together to ensure that confidential patient health care information is not accessed and available to persons not authorized by law to access such information, and

Be it resolved that laws be enacted to provide severe criminal and civil sanctions for those persons accessing and disclosing confidential patient information for purpose other than providing quality health care.

Be it further resolved that any written consent given by patients to release their data is actually "informed consent" and the patient is provided in writing with the names and addresses of all entities who will have access to or use the data and the purposes for which it will be accessed or used.

Maintenance Medications

Whereas, increasing health care costs and managed care is resulting in the delivery of an increasing number of prescriptions for maintenance medications by mail, and

Whereas, this system of delivery is resulting in patients with serious chronic medical conditions not receiving their medications when needed, and

Whereas, it is important that their drug therapy not be interrupted, therefore

Be it resolved that the member boards of the National Association of Boards of Pharmacy create a task force to address the problems and safety concerns surrounding the delivery of prescriptions by mail, and

Be it further resolved that model legislation or rules be drafted for consideration by the member states to ensure that prescription benefits plans include provisions that patients can receive medications in a timely manner and at no extra cost or inconvenience to the patient from a pharmacy of the patient's choice.

Patient Compliance

Whereas, the implementation of managed pharmacy care is resulting in patients being required to obtain many of their medications by mail, and

Whereas, effective drug utilization review (prospective and retrospective) and patient counseling cannot occur unless the pharmacist has complete information about the patient's drug therapy – both over-the-counter and prescription drugs, and

Whereas, the most effective communication between a pharmacist and a patient is face to face, therefore

Be it resolved that model legislation or rules be drafted for consideration by the member states to ensure that managed care plans providing pharmacy benefits be required to contract with a pharmacy of the patient's choice to provide medications in emergencies, provide patient consultation, and monitor the patient's drug therapy.

RES. 97-139 Mrs. Plant moved that the Board issue the following Compliance Bulletin to all manufacturers and wholesalers of ephedrine-containing products as well as pharmacists registered with the Board. The motion was seconded by Mr. Littlejohn and approved (Aye-8/Nay-0).

TO: MANUFACTURERS/WHOLESALEERS/PHARMACISTS

DATE: 03/**/97

RE: O-T-C PRODUCTS CONTAINING EPHEDRINE -- EXCEPTIONS TO CLASSIFICATION AS A SCHEDULE V CONTROLLED SUBSTANCE

Effective March 31, 1997, pursuant to enactment of Sub. H. B. 523, Food Products or Dietary Supplements that contain ephedrine are not Schedule V controlled substances if they meet all of the following criteria:

- (1) the product contains, per dosage unit or serving, not more than the lesser of twenty-five milligrams of ephedrine alkaloids or the maximum amount of ephedrine alkaloids provided in applicable regulations adopted by the United States Food and Drug Administration, and no other controlled substance.
- (2) the product contains no hydrochloride or sulfate salts of ephedrine alkaloids.
- (3) the product is packaged with a prominent label securely affixed to each package that states all of the following:
 - (a) the amount in milligrams of ephedrine in a serving or dosage unit;
 - (b) the amount of the food product or dietary supplement that constitutes a serving or dosage unit;
 - (c) that the maximum recommended dosage of ephedrine for a healthy adult human is the lesser of one hundred milligrams in a twenty-four-hour period for not more than twelve weeks or the maximum recommended dosage or

period of use provided in applicable regulations adopted by the United States Food and Drug Administration; and

(d) that improper use of the product may be hazardous to a person's health.

Food products and dietary supplements that contain ephedrine and **do not meet** the above criteria continue to be Schedule V controlled substances and may not be sold in Ohio by anyone other than a pharmacist in accordance with Ohio Administrative Code Rule 4729-11-09 (Sale of Schedule V controlled substance products without a prescription).

The Board of Pharmacy, pursuant to authority granted in division (K) of section 3719.44 of the Revised Code effective July 21, 1994, has excepted (by Rule 4729-12-09 of the Ohio Administrative Code) the following products which contain ephedrine, its salts, its isomers, or the salts of its isomers and, thereby, do not require sale by a pharmacist:

- (1) All products that contain the isomer known as pseudoephedrine or its salts, but do not also contain any of the isomer known as ephedrine or its salts. [exception effective 08/24/94]
- (2) "Breathe Easy®" herb tea. [exception effective 12/15/94]
- (3) "Bronkaid® Dual Action" caplets. [exception effective 12/15/94]
- (4) "Hydrosal®" hemorrhoidal ointment. [exception effective 12/15/94]
- (5) "Primatene® Dual Action Formula" tablets. [exception effective 01/10/96]

If you have any questions, please call the Board office.

NOTE: Sub. H.B. 523 provides additional requirements for the legal sale of food products or dietary supplements excepted from Schedule V. Please see paragraphs (K)(2)(b) and (K)(2)(c) of Section 3719.44 of the Ohio Revised Code.

Mr. Lamping moved that the Board receive per diem as follows:

PER DIEM	<u>03/03</u>	<u>03/04</u>	<u>03/05</u>	<u>03/06</u>	<u>03/07</u>	<u>Total</u>
Adelman	1	1	1	1	1	5
Cavendish	1	1	1	1	1	5
Hanna	1	1	-	1	1	4
Lamping	1	1	1	1	1	5
Littlejohn	-	1	1	1	1	4
Maslak	1	1	1	1	1	5
Neuber	1	1	1	1	1	5
Plant	1	1	1	1	1	5
Repke	1	1	1	1	1	5

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

12:17 p.m. Mr. Maslak moved that the meeting be adjourned. Mrs. Adelman seconded the motion and it was approved (Aye-8/Nay-0).

/s/ Suzanne L. Neuber
Suzanne L. Neuber, President

/d/ 4/23/97
Date

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