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Minutes Of The Meeting

Ohio State Board of Pharmacy
Columbus, Ohio
August 3, 4, 5, 1998

MONDAY, AUGUST 3, 1998

8:15 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:

Joseph J. Maslak, R.Ph. (President); Robert B. Cavendish, R.Ph. (Vice-President); Ann D. Abele, R.Ph.; Diane C. Adelman, R.Ph.; Paul F. Lamping, R.Ph.; Ruth A. Plant, R.Ph.; and Nicholas R. Repke, Public Member.

Staff reviewed the agenda with the Board and handed out reports and information for consideration during the business meeting. Material distributed included drafts of proposed amended rules and proposed new rules. The handouts included the proposals of the 1998 Ad Hoc Advisory Committee on Rule Review as well as the recommendations of all Sub. S.B. 66 advisory committees.

The following staff members joined the Board: William Winsley, Assistant Executive Director and Executive Director-designee; Tim Benedict, Compliance Administrator; Robert Cole, Compliance Supervisor; and William McMillen, Licensing Administrator.

8:22 a.m.

Board member Amonte Littlejohn arrived and joined the meeting. Mrs. Plant moved that the Board go into Executive Session for the purpose of conferring with the Assistant Attorney General concerning pending or imminent court action and the investigation of charges or complaints against licensees and registrants. President Maslak conducted the following roll call vote: Abele-Yes, Adelman-Yes, Cavendish-Yes, Lamping-Yes, Littlejohn-Yes, Plant-Yes, and Repke-Yes.

9:05 a.m.

RES. 99-020

The Executive Session was concluded and the meeting opened to the public. Mr. Cavendish moved that the Board President and Executive Director attend the District IV NABP/AACP Annual Meeting in Indianapolis, Indiana October 31-November 1, 1998 and that they be reimbursed for all expenses pursuant to state law and rules of the Office of Budget and Management. The motion was seconded by Mr. Repke and approved (Aye-7/Nay-0).

Mrs. Plant moved that the Minutes of the July 6, 7, 8, 1998 meeting be approved as amended. The motion was seconded by Mr. Lamping and approved (Aye-6/Nay-0/Abstain-1[Adelman]).

10:11 a.m.

Assistant Attorney General Sally Ann Steuk joined the Board for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of David Angelo Pishotti, R.Ph.; Warren, Ohio.

1:22 p.m.

The hearing was concluded and the Board recessed until 2:15 p.m.

2:18 p.m.

The Board reconvened and was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Thomas M. Kolczynski, R.Ph.; Solon, Ohio.

4:00 p.m.

The hearing was concluded and Mr. Lamping moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony received in the hearings in the matters of David Angelo Pishotti and Thomas M. Kolczynski. The motion was seconded by Mrs. Adelman and a roll call vote was conducted by President Maslak as follows: Abele-Yes, Adelman-Yes, Cavendish-Yes, Lamping-Yes, Littlejohn-Yes, Plant-Yes, and Repke-Yes.

4:40 p.m.

RES. 99-021

Mrs. Plant moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-980210-039)

In The Matter Of:

DAVID ANGELO PISHOTTI, R.Ph.

8426 Old Farm Trail N.E.

Warren, Ohio 44484

(R.Ph. No. 03-3-18491)

INTRODUCTION

THE MATTER OF DAVID ANGELO PISHOTTI CAME TO HEARING ON AUGUST 3, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

DAVID ANGELO PISHOTTI WAS REPRESENTED BY MICHAEL D. ROSSI, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Carl Frost, formerly with Ohio State Board of Pharmacy
- (2) Patrolman Michael A. Lambert, Youngstown Police Department

Respondent's Witnesses:

- (1) David Angelo Pishotti, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of four-page Summary Suspension Order/Notice of Opportunity for Hearing letter dated February 10, 1998.
- (2) Exhibit 1A--Hearing Request letter dated March 16, 1998.

- (3) Exhibit 1B--Copy of Hearing Schedule letter dated March 20, 1998.
- (4) Exhibit 1C--Continuance Request letter dated March 31, 1998.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated April 8, 1998.
- (6) Exhibit 1E--Copy of Pharmacist File Front Sheet of David Angelo Pishotti showing original date of registration as October 1, 1990, and two-page copy of Renewal Application for Pharmacist License, No. 03-3-18491, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, dated August 1, 1997.
- (7) Exhibit 2--Copy of three-page Youngstown Police Department Ohio Uniform Incident Report, No. 98-8347, of David Pishotti for incident occurring on February 2, 1998.
- (8) Exhibit 3--Copy of two-page Tri-State Laboratories, Inc. urine drug screen report, No. 980164, of David Pishotti dated February 4, 1998.
- (9) Exhibit 4--Copy of six-page report of Officer T. Malone, Mahoning County Drug Task Force Investigative Report regarding David Pishotti, date of occurrence: February 3, 1998.
- (10) Exhibit 5--Copy of two-page CVS Voluntary Statement of David Pishotti signed and witnessed on February 9, 1998.
- (11) Exhibit 6--Mahoning County Drug Task Force Written Statement of Marsha Vlosich signed and witnessed on July 23, 1998.
- (12) Exhibit 7--Copy of CVS/Revco #4154 Pharmacist's Statement of David Pishotti dated from December 1, 1997, through February 3, 1998; and copy of two-page Troutman Drug Co. record of prescriptions for Dave Pishotti dated from January 1, 1997, to February 25, 1998.
- (13) Exhibit 8--Copy of Youngstown Police Department Waiver of Rights Form of David Pishotti signed and witnessed on February 3, 1998; and attached copy of eight-page transcribed interview of David Angelo Pishotti, R.Ph. conducted at CVS/Revco #4154 on February 3, 1998.
- (14) Exhibit 9--Copy of two-page Tri-State Laboratories, Inc. report, No. 980196, regarding the David Pishotti case dated February 17, 1998.
- (15) Exhibit 10--Copy of Trumbull County Common Pleas Court Bill of Information, Case No. 98-CR-377-A, of David Angelo Pishotti; and copy of five-page Trumbull County Common Pleas Court Finding on Guilty Plea to Bill of Information, State of Ohio vs. David Angelo Pishotti, Case No. 98-CR-377-A.

Respondent's Exhibits:

- (1) Exhibit A--Three-page Judgment Entry in the Youngstown Municipal Court, Case No. 98 TR 300, State of Ohio vs. David Pishotti, dated March 16, 1998.
- (2) Exhibit B--Five St. Joseph Health Center Continuing Care Treatment Progress Reports of David Pishotti dated as follows: May 4, 1998; May 11, 1998; May 18, 1998; May 25, 1998; and June 3, 1998; and three copies of St. Joseph Health Center Continuing Care Treatment Progress Reports of David Pishotti dated as follows: June 9, 1998; June 15, 1998; and June 23, 1998.
- (3) Exhibit C--Copies of eleven urine alcohol and/or drug screen reports dated as follows: February 28, 1998; February 27, 1998; March 6, 1998; March 17, 1998; March 20, 1998; April 15, 1998; May 19, 1998; May 30, 1998; June 23, 1998; July 14, 1998; and July 18, 1998.
- (4) Exhibit D--Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of David Pishotti dated July 7, 1998.
- (5) Exhibit E--Copy of letter from Murphy Lewis dated July 21, 1998; letter from Karlene Rood dated July 25, 1998; and letter from Murphy Lewis dated July 27, 1998.
- (6) Exhibit F--Support Group Attendance Verification Sheet of David P. dated from July 9, 1998, through July 30, 1998.

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 David Angelo Pishotti was originally licensed in the state of Ohio on October 1, 1990, pursuant to examination, and on February 10, 1998, his license was summarily suspended in accordance with Section 3719.121(B) of the Ohio Revised Code.

- (2) David Angelo Pishotti 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, to wit: on or about February 2, 1998, David Angelo Pishotti was arrested by the Youngstown Police Department for operating a motor vehicle while under the influence of alcohol and/or drugs; David Angelo Pishotti was located in a southbound vehicle in the northbound lane of Interstate 680, with both driver's side tires missing and the rims severely damaged. After David Angelo Pishotti consented to giving a urine sample, the laboratory test indicated the presence of the following: benzo-diazepines: off the scale; opiates: off the scale; amphetamines: 1.5 of 3.0. Additionally, David Angelo Pishotti possessed several unit doses of various controlled substances and dangerous drugs. David Angelo Pishotti had been practicing pharmacy immediately prior to being arrested: the store where he practiced closed at 9:30 p.m.; David Angelo Pishotti was arrested at 10:39 p.m. David Angelo Pishotti has been observed to have fallen asleep while practicing pharmacy. David Angelo Pishotti has admitted to having a drug problem for the past 3 years, stealing and then consuming 4 unit doses of Hydrocodone 7.5mg with APAP 750mg and 4 unit doses of Carisoprodol every four hours since December 1, 1997.
- (3) David Angelo Pishotti did, on or about February 2, 1998, knowingly obtain, possess, or use controlled substances when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: David Angelo Pishotti possessed without a prescription the following drugs:

<u>Drug</u>	<u>Quantity</u>
Hydrocodone 7.5mg/APAP 750mg	26
Diazepam 10mg	5
unidentified pink tablet	½
Orphenadrine 100mg	25
Carisoprodol	25
Zithromax 600mg	2
Phentermine 37.5mg	4
unidentified broken pink tablet	1

Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.

- (4) David Angelo Pishotti did, from May 1, 1997, through February 3, 1998, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of CVS/Revco Discount Drug Center #4154, beyond the express or implied consent of the owner and/or by deception, to wit: David Angelo Pishotti stole the following controlled substances from his employer:

<u>Drug</u>	<u>Quantity</u>
Diazepam 10mg	
Hydrocodone 7.5mg/APAP 750mg	800
Phentermine 37.5mg	
Carisoprodol	800

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

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3) and (4) of the Findings of Fact constitute 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 (4) 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 (2) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued February 10, 1998.

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

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card, No. 03-3-18491, held by David Angelo Pishotti 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, David Angelo Pishotti may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
- (B) One year from the effective date of this Order, or thereafter, the Board will consider any petition filed by David Angelo Pishotti for a hearing, pursuant to Revised Code Chapter 119., upon the question of the reinstatement of his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
 - (1) David Angelo Pishotti must enter into a new contract with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider acceptable to the Board for a period of not less than five years from the effective date of this Order and, upon signing, submit a copy of the contract to the Board office. The contract must provide:
 - (a) random, observed urine drug screens shall be conducted at least every three months. The urine sample must be given within twelve hours of notification. Alcohol, Soma (carisoprodol), and phentermine must be added to the standard urine drug screen, and must include testing for creatinine or specific gravity of the sample as the dilutional standard;
 - (b) regular attendance, at least three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meetings, and at meetings of a professional support group; and
 - (c) the program shall immediately report to the Board of Pharmacy any positive urine screens and/or other violations of the contract.

Results of urine screens must be negative. Any confirmed positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.

- (2) David Angelo Pishotti must provide, at the time of petitioning the Board for reinstatement, evidence of his evaluation of chemical dependency status and recommendation for treatment by an ODADAS professional; written documentation from his treatment provider regarding compliance with the program pursuant to the contract; and copies of all urine drug screen reports.

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

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

MOTION CARRIED.

SO ORDERED.

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

RES. 99-022 Mrs. Plant moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-980209-037)

In The Matter Of:

THOMAS M. KOLCZYNSKI, R.Ph.

34036 Russell Drive
Solon, Ohio 44139
(R.Ph. No. 03-1-13647)

INTRODUCTION

THE MATTER OF THOMAS M. KOLCZYNSKI CAME TO HEARING ON AUGUST 3, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

THOMAS M. KOLCZYNSKI WAS REPRESENTED BY STEPHEN T. PARISI, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) None

Respondent's Witnesses:

- (1) Michael W. Bukach, Pharmacy Director, Medic Drug
- (2) Mary K. Ford, Assistant Manager, Medic Drug
- (3) Thomas Kolczynski, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter of Thomas M. Kolczynski dated February 9, 1998.
- (2) Exhibit 1A--Copy of hearing request letter dated February 27, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated February 27, 1998.
- (4) Exhibit 1C--Three-page letter from Stephen T. Parisi dated April 1, 1998.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated April 8, 1998.
- (6) Exhibit 1E--Copy of Pharmacist File Front Sheet of Thomas M. Kolczynski showing original date of registration as June 23, 1980, and two-page copy of Renewal Application for Pharmacist License, No. 03-1-13647, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998 of Thomas M. Kolczynski dated July 30, 1997.
- (7) Exhibit 2--Copy of six-page Bedford Medic Drugs #647 Tax Insurance Summary of Laurie Hunt dated from April 1, 1996, to November 17, 1997.
- (8) Exhibit 2(1)--Prescription number 489414.
- (9) Exhibit 2(2)--Prescription number 497068.
- (10) Exhibit 2(3)--Prescription number 500158.
- (11) Exhibit 2(4)--Prescription number 503287.
- (12) Exhibit 2(5)--Prescription number 505553.
- (13) Exhibit 2(6)--Prescription number 514835.
- (14) Exhibit 2(7)--Prescription number 517704.
- (15) Exhibit 2(8)--Prescription number 529497.
- (16) Exhibit 2(9)--Prescription number 532153.
- (17) Exhibit 2(10)--Prescription number 539778.
- (18) Exhibit 2(11)--Prescription number 544132.
- (19) Exhibit 3--Two-page Dangerous Drug Distributor Inspection Sheet of Bedford Drug, Terminal Distributor License No. 02-0092050, dated December 20, 1997.
- (20) Exhibit 4--Letter from Thomas M. Kolczynski in response to "Pink Sheet" dated December 27, 1997; copy of Bedford Medic Drugs #647 drug information sheet regarding Amoxicillin 250mg chew; and copy of Medic Discount Drugstores prescription label, number 582935, dated December 27, 1997.
- (21) Exhibit 5--Copy of insurance claim log sheet dated January 15, 1996.
- (22) Exhibit 6--Prescription number 490229.
- (23) Exhibit 7--Explanation of Tom regarding the error of prescription number 490229.
- (24) Exhibit 8--Copy of five pages of Bedford Medic Drugs #647 Tax Insurance Summaries for Stacey Christie listing dates as follows: January 4, 1992, through December 2, 1992; December 21, 1992, through September 14, 1993; December 28, 1994, through January 15, 1996; January 15, 1996, through November 11, 1996; and January 26, 1997, through October 4, 1997.
- (25) Exhibit 9--Two-page Bedford Medic Drugs #647 Productivity and Profit Report dated December 20, 1997.

Respondent's Exhibits:

- (1) Exhibit A--Copy of Medic Drug Reminder dated May 28, 1997.
- (2) Exhibit B--Copy of blank insurance claim log sheet.
- (3) Exhibit C1--Copy of insurance claim log dated July 20, 1998.
- (4) Exhibit C2--Copy of insurance claim log dated June 20, 1998.
- (5) Exhibit C3--Copy of insurance claim log dated May 20, 1998.
- (6) Exhibit C4--Two-page copy of insurance claim log dated April 20, 1998.
- (7) Exhibit C5--Copy of insurance claim log dated March 20, 1998.
- (8) Exhibit C6--Copy of insurance claim log dated February 20, 1998.
- (9) Exhibit C7--Copy of insurance claim log dated January 20, 1998.
- (10) Exhibit C8--Copy of insurance claim log dated December 20, 1997.
- (11) Exhibit D1--Sample copy of prescription label number 610065 stating at the bottom "For pharmacy questions call 232-6580."
- (12) Exhibit D2--Sample copy of prescription label number 610065 stating at the bottom "Price - Discount".
- (13) Exhibit E1--Copy of Bedford Medic Drugs #647 Tax Insurance Summary of Carin Christie listing dates from January 25, 1996, through June 19, 1998.

- (14) Exhibit E2--Copy of Page 1 of Bedford Medic Drugs #647 Tax Insurance Summary of Sandra Christie listing dates from February 22, 1996, through November 9, 1997.
- (15) Exhibit E3--Copy of Page 2 of Bedford Medic Drugs #647 Tax Insurance Summary of Sandra Christie listing dates from February 7, 1997, through July 5, 1998.
- (16) Exhibit E4--Copy of Page 3 of Bedford Medic Drugs #647 Tax Insurance Summary of Sandra Christie listing dates from June 27, 1998, through July 21, 1998.
- (17) Exhibit E5--Copy of Page 1 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from January 4, 1996, through March 19, 1996.
- (18) Exhibit E6--Copy of Page 2 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from March 25, 1996, through December 17, 1996.
- (19) Exhibit E7--Copy of Page 3 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from December 21, 1996, through March 17, 1997.
- (20) Exhibit E8--Copy of Page 4 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from February 17, 1997, through April 8, 1997.
- (21) Exhibit E9--Copy of Page 5 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from May 13, 1997, through April 25, 1997.
- (22) Exhibit E10--Copy of Page 6 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from April 29, 1997, through June 9, 1997.
- (23) Exhibit E11--Copy of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from June 9, 1997, through June 20, 1997.
- (24) Exhibit E12--Copy of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from June 23, 1997, through September 4, 1997.
- (25) Exhibit E13--Copy of Page 9 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from September 4, 1997, through May 1, 1998.
- (26) Exhibit E14--Copy of Page 10 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from February 19, 1998, through May 11, 1998.
- (27) Exhibit E15--Copy of Page 11 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie listing dates from May 21, 1998, through July 16, 1998.
- (28) Exhibit E16--Copy of Page 12 of Bedford Medic Drugs #647 Tax Insurance Summary of John W. Christie dated from January 1, 1996, through July 22, 1998.
- (29) Exhibit E17--Copy of Page 1 of Bedford Medic Drugs #647 Tax Insurance Summary of John Christie, Jr. listing dates from January 19, 1996, through June 8, 1996.
- (30) Exhibit E18--Copy of Page 1 of Bedford Medic Drugs #647 Tax Insurance Summary of Jeffrey Christie listing date of January 9, 1996.
- (31) Exhibit E19--Copy of Page 1 of Bedford Medic Drugs #647 Tax Insurance Summary of Jeff Christie, Jr. listing dates from July 15, 1996, through April 21, 1998.
- (32) Exhibit F1--Page 1 of letter on Medic Drug letterhead written to the Ohio State Board of Pharmacy dated July 14, 1998.
- (33) Exhibit F2--Page 2 of letter to the Ohio State Board of Pharmacy from Nathan S. Lipsyc dated July 14, 1998.
- (34) Exhibit G--Letter from Gerald M. Zlotnik dated July 15, 1998.
- (35) Six-page Pharmacist Hearing Memorandum Before the Ohio State Board of Pharmacy in Re: Thomas M. Kolczynski, Hearing Date: August 3, 1998; two-page Appendix to Pharmacist Hearing Memorandum; and the following copied attachments: Respondents Exhibits A, B, C1, C2, C3, C4, C5, C6, C7, C8, State's Exhibit 4, Respondents Exhibits D1, D2, E1, E2, E3, E4, E5, E6, E7, E8, E9, E10, E11, E12, E13, E14, E15, E16, E17, E18, E19, F1, F2, G, and State's Exhibit 8.

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 Thomas M. Kolczynski was originally licensed in the state of Ohio on June 23, 1980, pursuant to reciprocity, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that Thomas M. Kolczynski is the Responsible Pharmacist at Bedford Medic Drug, 647 Broadway, Bedford, 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) Thomas M. Kolczynski did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Thomas M. Kolczynski sold 28 units of Phentermine HCl 37.5mg for diet to the same patient pursuant to the following prescriptions which were not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, and thereby failing to fulfill his corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code:

<u>Rx No.</u>	<u>Written</u>	<u>Filled</u>	<u>Drug</u>	<u>Doctor</u>
489414	01/04/96	01/08/96	Adipex-P 37.5mg	Wehrum
497068	03/01/96	03/04/96	Adipex-P 37.5mg	Wehrum
500158	03/26/96	03/27/96	Adipex-P 37.5mg	Wehrum
503287	04/09/96	04/18/96	Phentermine 37.5mg	Wehrum
505553	04/27/96	05/06/96	Phentermine 37.5mg	Wehrum
514835	07/04/96	07/20/96	Adipex-P 37.5mg	Wehrum
517704	08/13/96	08/13/96	Adipex-P 37.5mg	Wehrum
529497	11/07/96	11/12/96	Adipex-P 37.5mg	Wehrum
532153	11/21/96	12/02/96	Adipex-P 37.5mg	Wehrum
539778	12/23/96	01/24/97	Phentermine 37.5mg	Wehrum
544132	02/21/97	02/25/97	Phentermine 37.5mg	Wehrum

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

- (3) Thomas M. Kolczynski did, on or about January 15, 1996, misbrand a drug and/or sell a misbranded drug, to wit: Thomas M. Kolczynski dispensed Lanoxin 0.25mg when the prescriber had prescribed Digoxin 0.125mg pursuant to prescription number 490229. The patient, a 12-year-old child, ingested the medication over a period of time, and experienced dizziness, nausea, and vomiting for approximately ten days. When a Board Specialist inquired as to the error and his lack of corrective action, Thomas M. Kolczynski indicated that he did not feel he needed to make changes [i.e., in stocking the pharmacy], that he "would probably make more errors during [his] career." Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.

CONCLUSION OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Section 3715.52 and 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 4729.16 of the Ohio Revised Code, and the Findings of Fact and Conclusion of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of two hundred fifty dollars (\$250.00) 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.

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Ms. Abele and approved (Aye-5/Nay-2).

4:45 p.m. The meeting was recessed until Tuesday, August 4, 1998 at 8:00 a.m.

TUESDAY, AUGUST 4, 1998

8:20 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:

Joseph J. Maslak, R.Ph. (President); Robert B. Cavendish, R.Ph. (Vice-President); Ann D. Abele, R.Ph.; Diane C. Adelman, R.Ph.; Paul F. Lamping, R.Ph.; Amonte B. Littlejohn, R.Ph.; Ruth A. Plant, R.Ph.; and Nicholas R. Repke, Public Member.

Staff handed out a request from the University of Cincinnati College of Pharmacy that the Board consider administering the National Association of Boards of Pharmacy Pharmacist Applied Knowledge and Judgment Assessment Examination on Diabetes to pharmacists participating in their Diabetes Pharmaceutical Care Certificate Program. The program will be presented to approximately 25 pharmacists on three days - August 28, 1998; August 29, 1998, and September 26, 1998.

The Executive Director discussed the request and informed the Board that additional information regarding the availability of the examination for administration by Boards of Pharmacy will be available by the September meeting of the Board. The matter was deferred until this information could be obtained from the National Association of Boards of Pharmacy. The Executive Director also informed the Board that he would be representing the National Association of Boards of Pharmacy at the AACP/ACPE Invitational Conference on Certificate Programs on August 11 and 12, 1998 in Pentagon City, Virginia.

9:04 a.m.

The Board recessed for ten minutes.

9:15 a.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing, pursuant to Ohio Revised Code Chapters 119. and 4729., in the matter of Jeffrey Paul Czuba, R.Ph., Fairview Park.

10:50 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 received during the hearing. Mr. Lamping seconded the motion and President Maslak conducted the following roll call vote: Abele-Yes, Adelman-Yes, Cavendish-Yes, Lamping-Yes, Littlejohn-Yes, Plant-Yes, and Repke-Yes.

RES. 99-023

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

ORDER OF THE STATE BOARD OF PHARMACY (Docket No. D-980319-049)

In The Matter Of:

JEFFREY PAUL CZUBA, R.Ph.
3899 West 226th Street
Fairview Park, Ohio 44126
(R.Ph. No. 03-3-21768)

INTRODUCTION

THE MATTER OF JEFFREY PAUL CZUBA CAME TO HEARING ON AUGUST 4, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JEFFREY PAUL CZUBA WAS REPRESENTED BY DENNIS M. COYNE, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Patrolman Raymond Barda, North Olmsted Police Department

Respondent's Witnesses:

- (1) Jeffrey Paul Czuba, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter of Jeffrey Paul Czuba dated March 19, 1998.
- (2) Exhibit 1A--Hearing Request letter dated March 25, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated March 31, 1998.
- (4) Exhibit 1C--Continuance Request letter dated April 3, 1998.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated April 14, 1998.
- (6) Exhibit 1E--Copy of Pharmacist File Front Sheet of Jeffrey Paul Czuba showing original date of registration as July 30, 1996; and two-page copy of Renewal Application for Pharmacist License, No. 03-3-21768, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Jeffrey Paul Czuba dated July 17, 1997.
- (7) Exhibit 2--Copy of Journal Entry in the Cuyahoga County Court of Common Pleas, State of Ohio vs. Jeffrey P. Czuba, dated October 20, 1997.
- (8) Exhibit 3--Copy of six-page North Olmsted Ohio Traffic Crash Report of Jeffrey Paul Czuba for incident occurring on January 25, 1997.
- (9) Exhibit 4--Copy of BAC DataMaster Test Report Form of Jeffrey P. Czuba dated January 25, 1997, and attached St. John West Shore Hospital test results of Jeffrey P. Czuba dated January 25, 1997.

Respondent's Exhibits:

- (1) Exhibit 1--Copy of letter from Sally J. Poirier dated April 26, 1998.
- (2) Exhibit 2--Copy of Columbia St. John West Shore Hospital assessment of Jeffrey Czuba dated April 2, 1997; and copy of TAI Alcohol and Drug Lecture Series, dated May 14.
- (3) Exhibit 3--Copies of seven attendance verification letters of Jeffrey Czuba for speaking on the following dates: December 18, 1997; January 16, 1998; February 4, 1998; March 18, 1998; April 29, 1998; June 10, 1998; and July 22, 1998.
- (4) Exhibit 4--Copy of letter from Kathryn A. McGinty dated December 3, 1997.
- (5) Exhibit 5--Copy of letter from Mabel Freeman dated March 8, 1996; copy of The Rho Chi Society certificate of Jeffrey Paul Czuba dated November 16, 1995; and copy of Phi Kappa Phi certificate of Jeffrey Paul Czuba dated May 21, 1996.
- (6) Exhibit 6--Copies of nine pages of transcripts of grades from The Ohio State University of Jeffrey Paul Czuba dated from December 18, 1991, through June 4, 1996.
- (7) Exhibit 7--Copy of letter from Forest B. Stoudt dated July 31, 1998.
- (8) Exhibit 8--Two-page copy of Settlement Agreement and Release of All Claims signed by Jeff Czuba on March 20, 1998, and by David P. Poirier on April 19, 1998.
- (9) Exhibit 9--Copy of four-page Assignment of Life Insurance Policy as Collateral of Insured Jeffrey P. Czuba dated March 20, 1998; and copy of Individual Acknowledgment notarized on March 20, 1998.

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 Jeffrey Paul Czuba was originally licensed in the state of Ohio on July 30, 1996, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) Jeffrey Paul Czuba did, on or about January 25, 1997, while operating a motor vehicle in the state of Ohio under the influence of alcohol, recklessly cause the death of another, an act for which he was convicted of the reduced charge of Vehicular Homicide pursuant to Section 2903.07 of the Ohio Revised Code.

CONCLUSION OF LAW

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

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and the Findings of Fact and Conclusion of Law set forth above, the State Board of Pharmacy hereby places the pharmacist identification card, No. 03-3-21768, held by Jeffrey Paul Czuba on probation for one year effective as of the date of the mailing of this Order. The terms of probation are as follows:

- (A) Jeffrey Paul Czuba must comply with the terms of probation imposed by the Cuyahoga County Court of Common Pleas.
- (B) Jeffrey Paul Czuba must submit quarterly progress reports to the Board; due December 10, 1998; March 10, 1999; June 10, 1999; and September 10, 1999; that include:
 - (1) evidence of compliance with court-ordered probation; and
 - (2) a brief summary regarding each speaking engagement.
- (C) Jeffrey Paul Czuba must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (D) Jeffrey Paul Czuba must abide by the rules of the Ohio State Board of Pharmacy.
- (E) Jeffrey Paul Czuba must comply with the terms of this Order.

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

MOTION CARRIED.

SO ORDERED.

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

11:20 a.m.

Board member Robert Cavendish excused himself and left to attend to personal business matters. The Board recessed the meeting until 1:00 p.m.

1:00 p.m.

The Board reconvened in Room 1919 for the purpose of meeting with the following candidates for licensure by reciprocity:

ALLEN, JOHN A.

03-2-23228

KENTUCKY

COOPER, MICHAEL J.	03-2-23197	NEW YORK
DITTUS, KRYSTAL S.	03-2-23215	KENTUCKY
DITTUS III, OLIVER E.	03-2-23214	KENTUCKY
GAINEY, CHERYL D.	03-2-23211	NORTH CAROLINA
GARRITY, ROBERT J.	03-2-22864	ILLINOIS
GILLILAND, KRISTIN K.	03-2-23205	PENNSYLVANIA
HANCOCK, JENNIE L.	03-2-23209	KENTUCKY
HUSSONG, KATHY J.	03-2-23065	TENNESSEE
JOWANOVITZ, CARLA W.	03-2-23186	INDIANA
KENNEDY, MARY J.	03-2-23217	NORTH CAROLINA
MUKASA, PHYLLIS N.	03-2-23203	MASSACHUSETTS
NEIDIG, BARBARA E.	03-2-23124	PENNSYLVANIA
NICHOLAS, AMY S.	03-2-23213	KENTUCKY
SAELENS, DAVID A.	03-2-23218	IOWA
SARANG, TRUPTI M.	03-2-23223	TEXAS
SILVER, AL M.	03-2-23212	ILLINOIS
TENNANT, AMY A.	03-2-23219	MICHIGAN

1:25 p.m.

RES. 99-024

Following presentations by Board members and self-introductions by the candidates for licensure by reciprocity, Mr. Lamping moved that the Board approve the candidates for licensure. The motion was seconded by Mrs. Adelman and approved by the Board (Aye-6/Nay-0).

1:55 p.m.

The Board reconvened in Room 1914 to continue consideration of agenda items with the exception of Mr. Cavendish who left earlier for personal reasons and Ruth Plant who was engaged in a telephone conference call with other members of the Pharmacy Technician Certification Board.

2:30 p.m.

Assistant Attorney General Sally Ann Steuk joined the Board for the purpose of conducting an adjudication hearing pursuant to Ohio Revised Code Chapters 119. and 4729. in the matter of Gregory G. Korte, R.Ph., Miamisburg.

4:37 p.m.

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

4:53 p.m.

Assistant Attorney General Sally Ann Steuk joined the Board for the purpose of conducting an adjudication hearing pursuant to Ohio Revised Code Chapters 119. and 4729. in the matter of Michael Allen Grothouse, R.Ph., West Carrollton.

5:26 p.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 submitted in the hearing of Michael Allen Grothouse, R.Ph. The motion was seconded by Mrs. Adelman and President Maslak conducted the following roll call vote: Abele-Yes, Adelman-Yes, Lamping-Yes, Littlejohn-Yes, Plant-Yes, and Repke-Yes.

5:35 p.m.

RES. 99-025

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

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-980508-057)

In The Matter Of:

MICHAEL ALLEN GROTHOUSE, R.Ph.
1127 King Richard Parkway
West Carrollton, Ohio 45449
(R.Ph. No. 03-2-16437)

INTRODUCTION

THE MATTER OF MICHAEL ALLEN GROTHOUSE CAME TO HEARING ON AUGUST 4, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

MICHAEL ALLEN GROTHOUSE WAS NOT PRESENT, NOR WAS HE REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

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

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of two-page Probation Violation Hearing letter dated May 8, 1998.
- (2) Exhibit 1A--Ohio State Board of Pharmacy Personal Delivery Record of Michael Allen Grothouse dated June 17, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated June 11, 1998.
- (4) Exhibit 2--Copy of five-page Order of the State Board of Pharmacy, Docket No. D-920102-090, of Michael Allen Grothouse dated August 11, 1992.
- (5) Exhibit 3--Copy of four-page Order of the State Board of Pharmacy, Docket No. D-920102-090, of Michael Allen Grothouse dated April 21, 1994.
- (6) Exhibit 4--Four-page copy of Compliance Administrator's Report on probationary status of Michael Grotehouse (sic Grothouse), not dated.
- (7) Exhibit 5--Letter from Martha T. Freedman dated May 14, 1998, and attached copy of urine drug screen report of Michael A. Grothouse dated April 21, 1998.
- (8) Exhibit 6--Two-page fax to Tim Benedict or Frank Wickham from Mike Grothouse dated August 3, 1998, received August 4, 1998.
- (9) Exhibit 7--Two-page fax to Fred Williams from Vandalia Municipal Court received on August 4, 1998.

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 May 8, 1998, Michael Allen Grothouse was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing.
- (2) As demonstrated by personal delivery record of June 17, 1998, Michael Allen Grothouse received the letter of May 8, 1998, informing him of the allegations against him, and his rights.

- (3) Michael Allen Grothouse responded to the letter of May 8, 1998, by facsimile which was received by the Board on August 4, 1998.
- (4) Records of the Board of Pharmacy indicate that Michael Allen Grothouse was originally licensed in the state of Ohio on August 6, 1986, pursuant to examination. Michael Allen Grothouse's license to practice pharmacy was suspended on October 1, 1992; and, on or about April 21, 1994, his license was reinstated and placed on probation for a period of five years. The terms of probation included entering into a contract with South Community Inc., or an equivalent program acceptable to the Board, for five years, requiring in part that "the treatment program must submit quarterly reports to the Board" and "Michael Allen Grothouse shall submit quarterly progress reports to the Board . . .".
- (5) Michael Allen Grothouse has failed to comply with the Order of the Board, Docket No. D-920102-090, dated April 21, 1994. Failure to submit reports is in violation of Section (1)(b) of the terms of probation as required in the Board's Order.

ACTION OF THE BOARD

Pursuant to the Order of the Board dated April 21, 1994, and the Findings of Fact set forth above, the State Board of Pharmacy takes the following actions in the matter of Michael Allen Grothouse:

- (A) The State Board of Pharmacy hereby revokes probation and suspends the pharmacist identification card, No. 03-2-16437, held by Michael Allen Grothouse 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, Michael Allen Grothouse may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
- (B) Three years after the effective date of this Order, or thereafter, the Board will consider any petition filed by Michael Allen Grothouse for a hearing, pursuant to Chapter 119. of the Revised Code, upon the question of the reinstatement of his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
 - (1) Michael Allen Grothouse must enter into a new contract with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years from the effective date of this Order and, upon signing, submit a copy of the contract to the Board office. The contract must provide:
 - (a) random, **observed** urine drug screens shall be conducted at least every three months. The urine sample must be given within twelve hours of notification. Alcohol must be added to the standard urine drug screen, and must include testing for creatinine or specific gravity of the sample as the dilutional standard;
 - (b) regular attendance, at least three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meetings, and at meetings of a professional support group; and
 - (c) the program shall immediately report to the Board of Pharmacy any positive urine screens and/or other violations of the contract.

Results of urine screens must be negative. Any confirmed positive results, including those which may have resulted from ingestion of food, but

excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.

- (2) Michael Allen Grothouse must provide, at the time of petitioning the Board for reinstatement, evidence of his evaluation of chemical dependency status and recommendation for treatment by an ODADAS professional, written documentation from his treatment provider regarding compliance with the program pursuant to the contract; and copies of all urine drug screen reports.

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 (Aye-5/Nay-1).

5:40 p.m. The Board recessed until 8:00 a.m., Wednesday, August 5, 1998.

WEDNESDAY, AUGUST 5, 1998

8:11 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:

Joseph J. Maslak, R.Ph. (President); Robert B. Cavendish, R.Ph. (Vice-President); Ann D. Abele, R.Ph.; Diane C. Adelman, R.Ph.; Paul F. Lamping, R.Ph.; Ruth A. Plant, R.Ph.; and Nicholas R. Repke, Public Member.

RES. 99-026 Tim Benedict, Compliance Administrator, submitted a request from Shirley Kramer, R.Ph. for a waiver pursuant to paragraph (A) of Ohio Administrative Code Rule 4729-5-11 for the following two terminal distributor licenses:

02-0817900 Cigna Health Care of Ohio; 161 North Hamilton Road, Columbus, Ohio
02-0817850 Cigna Health Care of Ohio; 4885 Olentangy River Road, Columbus, Ohio

Following discussion, Mr. Cavendish moved that R.Ph. Kramer (03-3-11698) be granted the waiver for ninety days. The motion was seconded by Mr. Lamping and approved (Aye-6/Nay-0).

The Board reviewed reports submitted by staff.

8:33 a.m.

Board Member Amonte Littlejohn arrived and joined the meeting. The Board continued their review of administrative matters not requiring formal action by the Board.

8:40 a.m.

Mrs. Plant moved that the Board go into Executive Session for the purpose of conferring with the Assistant Attorney General regarding the investigation of charges and complaints against licensees and registrants and deliberating on the evidence and testimony received during the hearing in the matter of Gregory G. Korte, R.Ph. The motion was seconded by Mr. Cavendish and a roll call vote was conducted by President Maslak as follows: Abele-Yes, Adelman-Yes, Cavendish-Yes, Lamping-Yes, Littlejohn-Yes, Plant-Yes, and Repke-Yes.

9:37 a.m.

RES. 99-027

The Executive Session was concluded and the meeting opened to the public. Ms. Abele moved that the Board adopt the following Order in the matter of Gregory G. Korte, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-980406-053)

In The Matter Of:

GREGORY G. KORTE, R.Ph.

2397 Windsor Village
Miamisburg, Ohio 45342
(R.Ph. No. 03-2-13551)

INTRODUCTION

THE MATTER OF GREGORY G. KORTE CAME TO HEARING ON AUGUST 4, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

GREGORY G. KORTE WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Joseph Holliday, Ohio State Board of Pharmacy
- (2) Angela Neff, Nursing Assistant, Miamisburg, Ohio
- (3) Jennifer Prichard, R.Ph., Walgreen's, Miamisburg, Ohio
- (4) Stephanie Scott, Pharmacy Tech
- (5) Frederick Williams, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Jeanette Bundy, Fiancé of Respondent
- (2) Gregory G. Korte, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Summary Suspension Order/Notice of Opportunity for Hearing letter of Gregory G. Korte dated April 6, 1998.
- (2) Exhibit 1A--Hearing Request letter dated April 21, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated April 30, 1998.
- (4) Exhibit 1C--Copy of Pharmacist File Front Sheet of Gregory G. Korte showing original date of registration as February 26, 1980; and two-page copy of Renewal Application for Pharmacist License, No. 03-2-13551, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Gregory G. Korte dated September 12, 1997.
- (5) Exhibit 1-1--Copy of three-page Kentucky Board of Pharmacy Findings of Fact and Conclusions of Law in the matter of Gregory G. Korte dated January 27, 1982.
- (6) Exhibit 1-2--Copy of two-page Notice of Opportunity for Hearing letter of Gregory G. Korte dated July 2, 1987; and copy of three-page Consent Agreement between Gregory G. Korte and the Ohio State Board of Pharmacy dated December 9, 1987.
- (7) Exhibit 1-3--Copy of Terminal Distributor Notification of Change of Responsible Person form of Phar-Mor #603 dated March 3, 1998.

- (8) Exhibit 2--Seven-page copy of Montgomery County Sheriff's Ohio Uniform Incident Report, No. 98088356, regarding Gregory G. Korte for incident occurring March 29, 1998; copy of Criminal Complaint in the Municipal Court of Kettering, Ohio, No. D-98088356, dated March 30, 1998; copy of Statement of Darren Snurr signed and dated March 29, 1998; and Montgomery County Sheriff's Office Vehicle Inventory/Custody Report, No. 98-088-356, of Gregory G. Korte dated March 29, 1998.
- (9) Exhibit 2A--Montgomery County Common Pleas Court Indictment, No. 98-CR-2435, of Gregory G. Korte dated July 23, 1998.
- (10) Exhibit 2B--Copy of two-page Miami Valley Regional Crime Laboratory Report, No. 98-10287, from Gary R. Shaffer dated July 8, 1998.
- (11) Exhibit 3--Handwritten Statement of Angela M. Neff signed and notarized on March 30, 1998.
- (12) Exhibit 4--Two-page Handwritten Statement of Gregory G. Korte signed and notarized on April 1, 1998.
- (13) Exhibit 5--Three-page Handwritten Statement of Jennifer M. Prichard signed and notarized on April 2, 1998.
- (14) Exhibit 6--Two-page Handwritten Statement of Stephanie Scott signed and notarized on April 22, 1998.
- (15) Exhibit 7--Bound notebook labeled "Communication Log, Customer Complaints, Compliments, Problems, Etc." dated from March 6, 1998, through March 20, 1998; copy of prescription blank for Vickie Slone, not dated; and copy of prescription blank for Virginia Sloan dated March 17, 1998.
- (16) Exhibit 8--Copy of two-page Secret Indictment in the Greene County Common Pleas Court, State of Ohio vs. Gregory G. Korte, Case No. 98-CR-213, dated May 15, 1998.
- (17) Exhibit 9--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Soma dated May 3, 1998; Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Adipex-P dated May 3, 1998; Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Ionamin 30mg dated May 3, 1998; Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Xanax 2mg dated May 5, 1998; Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Xanax 1mg dated May 5, 1998; Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Ativan 1mg dated May 3, 1998; Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Ativan 2mg dated May 3, 1998; Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Ativan 0.5mg dated May 3, 1998; Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Serax 10mg dated May 5, 1998; Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Vicoprofen 7.5/200 dated May 3, 1998; Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Vicodin dated May 5, 1998; two copies of Phar-Mor #603 Drug Movement Report for Hydrocodone/APAP 5-500mg and Vicodin 500-5mg dated from March 1, 1998, through March 31, 1998; copy of Phar-Mor #603 Drug Movement Report for Ativan 2mg and Lorazepam 2mg dated from March 1, 1998, through March 31, 1998; copy of Phar-Mor #603 Drug Movement Report for Vicoprofen dated from March 1, 1998, through March 31, 1998; copy of Phar-Mor #603 Drug Movement Report for Ativan 0.5mg and Lorazepam 0.5mg dated from March 1, 1998, through March 31, 1998; copy of Phar-Mor #603 Drug Movement Report for Ativan 1mg and Lorazepam 1mg dated from March 1, 1998, through March 31, 1998; copy of Phar-Mor #603 Drug Movement Report for Adipex dated from March 1, 1998, through March 31, 1998; copy of Phar-Mor #603 Drug Movement Report for Phentermine 37.5mg dated from March 1, 1998, through March 31, 1998; copy of Phar-Mor #603 Drug Movement Report for Ionamin 30mg dated from March 1, 1998, through March 31, 1998; copy of McKesson Drug Customer Account of Phar-Mor #603 for Carisoprodal Tab 350mg dated from January, 1998, through March, 1998; and copy of Phar-Mor #603 Drug Movement Report for Carisoprodol 350mg dated from March 1, 1998, through March 31, 1998.
- (18) Exhibit 10--Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Serax 30mg dated May 5, 1998; Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Tylenol #3 dated May 3, 1998; copy of Phar-Mor #603 Drug Movement Report for APAP/Codeine 300-30mg and Tylenol/Codeine #3; Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Serax 15mg dated May 5, 1998; Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Restoril 30mg dated May 3, 1998; Accountability

Statement of Phar-Mor #603 for Restoril 30mg (Temazepam), not dated; Number Dispensed Accountability Sheet of Phar-Mor #603 for Restoril 30mg dated March 31, 1998; copy of Phar-Mor #603 Narcotic and Controlled Drug Sales Report for Restoril 30mg dated from March 1, 1998, to March 31, 1998; Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Lortab 10mg dated May 3, 1998; copy of Phar-Mor #603 Drug Movement Report for Hydrocodone/APAP 10-650mg dated from March 1, 1998, through March 31, 1998; copy of Phar-Mor #603 Drug Movement Report for Lortab 10mg dated from March 1, 1998, through March 31, 1998; and Ohio State Board of Pharmacy Drug Audit Accountability Sheet of Phar-Mor #603 for Xanax .5mg dated May 5, 1998.

Respondent's Exhibits:

- (1) None

FINDINGS OF FACT

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

- (1) Records of the Board indicate that Gregory G. Korte was originally licensed in the state of Ohio on February 26, 1980, pursuant to examination. On April 6, 1998, Gregory G. Korte's license was summarily suspended in accordance with Sections 3719.121(A) and 3719.121(B) of the Ohio Revised Code.
- (2) Gregory G. Korte 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, to wit: Gregory G. Korte has admitted to Board agents that he is addicted to drugs and alcohol; Gregory G. Korte has been observed acting impaired and under the influence of alcohol and/or drugs while practicing pharmacy; Gregory G. Korte has committed numerous errors while practicing pharmacy under the influence of drugs; and, Gregory G. Korte has stolen and consumed controlled substances while practicing pharmacy. Gregory G. Korte was observed, on at least one occasion, unable to operate the pharmacy computer to such a degree that he gave all customers a \$25. discount so they could get their drugs without him having to bill their insurance companies using the computer. Such conduct indicates that Gregory G. Korte is addicted to 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.
- (3) Gregory G. Korte did, on or about March 29, 1998, knowingly obtain, possess, or use controlled substances when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Gregory G. Korte was arrested on this date, asleep in his car in a shopping center, with possession of 30 unit doses of Ionamin, 6 unit doses of Restoril 30mg, 19 unit doses of Phentermine 37.5mg, 10 unit doses of Vicoprofen, and 5 unit doses of Ativan 1mg without a valid prescription. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (4) Gregory G. Korte did, from January 1, 1998, through March 30, 1998, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Phar-Mor, beyond the express or implied consent of the owner, to wit: Gregory G. Korte admittedly stole numerous controlled substances and dangerous drugs including Vicodin, Vicoprofen, Serax, Ativan, Xanax, Phentermine HCl, Ionamin, and Carisoprodol. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3) and (4) of the Findings of Fact constitute 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 (4) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings of Fact constitute being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued April 6, 1998.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Gregory G. Korte:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-2-13551, held by Gregory G. Korte effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-2-13551, held by Gregory G. Korte effective as of the date of the mailing of this Order.
- (C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-2-13551, held by Gregory G. Korte 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. 03-2-13551, held by Gregory G. Korte 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 (Aye-5/Nay-0/Abstain-2[Cavendish, Plant]).

The Board then considered proposed amendments to the Prescription Network Services ("PNS") Agreement contract submitted by National Data Corporation on July 24, 1998. The proposed amendments were submitted in response to the Board's concerns regarding patient confidentiality and National Data Corporation's access to patient prescription information. The Board's concerns arose from an inquiry submitted by Buehler Food Markets, Inc. of Wooster, Ohio (see Resolution 98-186, April 7, 1998 Board minutes).

RES. 99-028 The proposed amendments are applicable to the Pre- and Post-Edit program and stipulates that "any program requiring patient-identifiable data shall require a separate document to be executed by Subscriber." Following a review of proposed language regarding patient-identifiable data, the Board reached a consensus that the language must be modified. In order to be acceptable the phrase "claim level data" must be changed to "patient-specific data"; the term "informed" must be placed between the words "written" and "consent" in line one of section 2(f); and the phrase "healthcare provider, or payor" deleted from the end of the first line of section 2(f). These changes would provide assurances to patients, the Board, and any Ohio pharmacy entering into such a contract that confidential patient information would not be disclosed without the patient's knowledge and written consent.

RES. 99-029 The Board then considered a revised copy of Cardinal Health's ScriptLINE Agreement as submitted on July 20, 1998 by Robert P. Giacalone, Vice President for Regulatory Affairs. The amended contract was submitted in response to the Board's concerns regarding patient confidentiality and Cardinal Health's access to patient prescription information (see Resolution 98- 201, May 5, 1998 Board minutes). Following a review and discussion of the amended agreement, the Board concurred with Robert P. Giacalone's statement in his cover letter that "the safeguards" included in the amendments "adequately address the patient privacy issue and will work to ensure that patient specific information will not be disseminated".

The Board then considered the following documents submitted on July 31, 1998 by IMS America Ltd. Pharmaceutical Division regarding the company's existing privacy practices and their commitment to ensuring privacy in their collection and use of patient-anonymous prescription data:

- Cover letter dated July 30, 1998
- IMS HEALTH Medical Records Confidentiality Model Language (language representative of what IMS encourage in any state-level privacy legislation)
- IMS HEALTH Policies Defining Employee Responsibilities for Health Care Information (a recent draft of a formal policy that IMS HEALTH will apply to each IMS HEALTH employee and IMS HEALTH will require that each employee abide by the strict rules established for the way in which health care information possessed by the company is handled as a condition of employment)
- IMS HEALTH Code of Fair Information Practices booklet

RES. 99-030 The documents were submitted in response to the Cease and Desist issued by the Board to RNA, Incorporated on May 8, 1998 (see Resolution 98-200, May 5, 1998 Board Minutes). Following a review and consideration of the documents submitted, the Board felt assured that IMS HEALTH has adequate safeguards in place to ensure that the company collects only patient-anonymous data and that IMS HEALTH uses such data for legitimate health care purposes.

10:35 a.m.

Mrs. Plant moved that the Board go into Executive Session for the purpose of considering the investigation of charges and complaints against licensees and registrants. President Maslak conducted the following roll call vote after Mr. Lamping's second of the motion: Abele-Yes, Adelman-Yes, Cavendish-Yes, Lamping-Yes, Littlejohn-Yes, Plant-Yes, and Repke-Yes.

10:58 a.m.

RES. 99-031

The Executive Session was concluded and the meeting opened to the public. Mr. Cavendish moved that the Board direct the Assistant Attorney General to inform the attorney in the matter of Ruth Anne Roberts, R.Ph. that the provisions of the settlement offer previously agreed to by the Board still stand and that they either be accepted or that the hearing will be held as scheduled. The motion was seconded by Mrs. Plant and approved (Aye-6/Nay-0/Abstain-1[Abele]).

The Board then reviewed proposals of the committees to amend rules and adopt new rules. The proposals included those prepared by the 1998 Ad Hoc Advisory Committee on Rule Review and committees for Ohio Administrative Code Chapters 4729-7, 4729-9, 4729-17, 4729-19, and proposed 4729-29. Decisions regarding the proposals were deferred until the September, 1998 Board meeting.

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

PER DIEM	<u>07/15</u>	<u>07/16</u>	<u>07/27</u>	<u>07/28</u>	<u>07/29</u>	<u>07/31</u>	<u>08/03</u>	<u>08/04</u>	<u>08/05</u>	<u>Total</u>
Abele	-	1	-	1	-	1	1	1	1	6
Adelman	1	-	-	-	-	-	1	1	1	4
Cavendish	1	-	1	-	1	-	1	1	1	6
Lamping	-	-	-	1	-	-	1	1	1	4
Littlejohn	-	-	-	-	-	-	1	1	1	3
Maslak	-	-	1	-	1	-	1	1	1	5
Neuber	1	-	-	-	-	-	-	-	-	1
Plant	-	1	-	1	-	-	1	1	1	5
Repke	-	-	-	-	-	-	1	1	1	3

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

12:00 p.m.

Mr. Cavendish moved that the meeting be adjourned. The motion was seconded by Mr. Lamping and approved (Aye-7/Nay-0).

/s/ Joseph J. Maslak
Joseph J. Maslak, President

/d/ 9/9/98
Date

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