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Minutes Of The Meeting

Ohio State Board of Pharmacy
Columbus, Ohio
September 7, 8, 9, 1999

TUESDAY, SEPTEMBER 7, 1999

10:15 a.m. ROLL CALL

The State Board of Pharmacy convened in Room 1952, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Robert B. Cavendish, R.Ph. (President); Diane C. Adelman, R.Ph. (Vice-President); Ann D. Abele, R.Ph.; Robert P. Giacalone, R.Ph.; Lawrence J. Kost, R.Ph.; and Nicholas R. Repke, Public Member.

Also present were William T. Winsley, Executive Director; Timothy Benedict, Assistant Executive Director; David Rowland, Legal Affairs Administrator; Sally Ann Steuk, Assistant Attorney General; and William McMillen, Licensing Administrator.

10:20 a.m.

Ms. Abele moved that the Board go into Executive Session for the purpose of conferring with the Assistant Attorney General regarding pending and imminent court matters pursuant to Section 121.22(G)(3) of the Revised Code, and for the purpose of the investigation of complaints regarding licensees or registrants pursuant to Section 121.22(G)(1) of the Revised Code. The motion was seconded by Mrs. Adelman and a roll call vote was conducted by President Cavendish as follows: Abele-Yes, Adelman-Yes, Giacalone-Yes, Kost-Yes, and Repke-Yes.

11:10 a.m.

RES. 2000-032 The Board came out of Executive Session and the meeting was opened to the public. Mr. Repke moved that the Board deny the proposed settlement that had been offered to the Board in the matter of Robert Paul Blasko, R.Ph. The motion was seconded by Ms. Abele and was approved by the Board (Aye-5/Nay-0).

RES. 2000-033 Mr. Repke then moved that, pursuant to Section 3719.121 of the Revised Code, the Board summarily suspend the license to practice pharmacy belonging to Raleigh L. Smith, R.Ph. (03-1-10859) due to the fact that a continuation of his professional practice presents a danger of immediate and serious harm to others. The motion was seconded by Ms. Abele and approved by the Board (Aye-5/Nay-0).

RES. 2000-034 Ms. Abele then moved that, pursuant to Section 3719.121 of the Revised Code, the Board summarily suspend the license to practice pharmacy belonging to James Murray Bayless, R.Ph. (03-3-10368) due to the fact that a continuation of his professional practice presents a danger of immediate and serious harm to others. The motion was seconded by Mr. Repke and approved by the Board (Aye-5/Nay-0).

RES. 2000-035 Ms. Abele next moved that, pursuant to Section 3719.121 of the Revised Code, the Board summarily suspend the license to practice pharmacy belonging to Daniel Paul Poignon, R.Ph. (03-2-15675) due to the fact that a continuation of his professional practice presents a danger of immediate and serious harm to others. The motion was seconded by Mr. Repke and approved by the Board (Aye-5/Nay-0).

RES. 2000-036 Mr. Winsley then reported that the following Settlement Agreement for Todd R. Jaros, R.Ph. had been signed by all parties and would be effective as of the date of the Board President's signature:

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-990810-013)

In The Matter Of:

TODD R. JAROS, R.Ph.
2011 Savannah Parkway
Westlake, Ohio 44145
(R.Ph. No. 03-1-18980)

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

Todd R. Jaros enters into this Agreement being fully informed of his rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudication hearing on the issues contained herein.

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

- (A) The Ohio State Board of Pharmacy is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, place on probation, refuse to grant or renew an identification card, or impose a monetary penalty on the license holder for violation of any of the enumerated grounds.
- (B) Todd R. Jaros neither admits nor denies the allegations stated in the attached Notice; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same:
 - (1) Records of the Board of Pharmacy indicate that Todd R. Jaros was originally licensed in the state of Ohio on July 21, 1991, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
 - (2) Todd R. Jaros is addicted to liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Todd R. Jaros voluntarily entered into a drug treatment program at the Cleveland Clinic; numerous hydrocodone products were missing from the pharmacy in which Todd R. Jaros was employed; Todd R. Jaros admitted to taking these drugs as well as Diazepam, Alprazolam and Ambien; and Todd R. Jaros admitted to the responsible pharmacist where he was employed, Rite Aid #4771, that he is addicted to hydrocodone.
 - (3) Todd R. Jaros did, from on or about July 27, 1997, through May 15, 1999, procure the dispensing of dangerous drugs, to wit: Todd R. Jaros obtained by deception the following hydrocodone products from his employer:

<u>Drug</u>	<u>Quantity</u>
Vicoprofen	600 tablets
Vicodin HP	80 tablets
Hycodan	60 tablets
Hydrocodone 10mg/APAP 650mg	900 tablets
Hydrocodone 10mg/APAP 660mg	180 tablets
Hydrocodone Bitartrate Syrup	7 pints
Hydrocodone/Guaifenesin Syrup	9 pints
Hydrocodone 7.5mg/APAP 500mg	120 tablets
Hydrocodone CP Syrup	270 ml
Hydrocodone PA Syrup	320 ml

Such conduct is in violation of Section 2925.22 of the Ohio Revised Code.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Todd R. Jaros knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) The indefinite suspension of his pharmacist identification card, No. 03-1-18980.
 - (1) Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Todd R. Jaros 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.
 - (2) 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.
- (B) July, 2000, or thereafter, the Board will consider any petition filed by Todd R. Jaros for a hearing, pursuant to Revised Code Chapter 119. of the Ohio 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) Todd R. Jaros must enter into a new contract with a limited treatment provider acceptable to the Board for a period of not less than five years from the effective date of this Agreement 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.
 - (i) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.
 - (ii) Hydrocodone must be added to the standard urine drug screen.
 - (iii) Results of urine screens must be negative. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract and probation.
 - (b) The intervener/sponsor shall provide copies of all urine screens to the Ohio Board of Pharmacy in a timely fashion.

- (c) Regular attendance, a minimum of three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting is required.
- (d) The program shall immediately report to the Ohio Board of Pharmacy any violations of the contract and/or lack of cooperation.

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

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

Todd R. Jaros waives any and all claims or causes of action he may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. Todd R. Jaros waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

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

This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the date of the Board President's signature below.

<u>/s/ Todd R Jaros</u>	<u>/d/ 8/18/99</u>
Todd R. Jaros, Respondent	Date of Signature
<u>/s/ J R Irwin</u>	<u>/d/ 8/27/99</u>
John Irwin, M.D., Attorney for Respondent	Date of Signature
<u>/s/ Robert B Cavendish</u>	<u>/d/ 9/7/99</u>
Robert B. Cavendish, President, Ohio State Board of Pharmacy	Date of Signature
<u>/s/ Sally Ann Steuk</u>	<u>/d/ 9-7-99</u>
Sally Ann Steuk, Ohio Assistant Attorney General	Date of Signature

RES. 2000-037 Ms. Abele then moved that the Board deny the proposed appeal settlement that had been offered to the Board in the matter of Linden Medical Pharmacy. The motion to deny the settlement offer was seconded by Mr. Repke and was approved by the Board (Aye-5/Nay-0).

Ms. Abele moved that the Board approve the Minutes of the August 2, 3, 4, 1999 meeting as amended. The motion was seconded by Mr. Repke and approved by the Board (Aye-5/-Nay-0).

11:35 a.m.

The Board recessed for lunch.

1:03 p.m.

The Board reconvened in Room 1952, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Robert B. Cavendish, R.Ph. (President); Diane C. Adelman, R.Ph. (Vice-President); Ann D. Abele, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Lawrence J. Kost, R.Ph.; Amonte B. Littlejohn, R.Ph.; and Nicholas R. Repke, Public Member.

1:07 p.m.

RES. 2000-038 Mr. Rowland then presented a request from Jeffrey Scott Dannemiller for a continuance of the hearing scheduled to be heard by the Board. Mr. Repke moved that the Board deny the continuance request and hold the hearing as planned. The motion was seconded by Mr. Littlejohn and approved (Aye-7/Nay-0).

1:12 p.m.

The Board 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 Jeffrey Scott Dannemiller, R.Ph., Akron, Ohio.

1:50 p.m.

The hearing ended and the record was closed. The Board took a brief recess.

2:06 p.m.

Ms. Abele moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against licensees or registrants and to consider personnel matters pursuant to Section 121.22(G)(1) of the Revised Code. Mr. Repke seconded the motion. President Cavendish then conducted the following roll call vote: Abele-Yes, Adelman-Yes, Eastman-Yes, Giacalone-Yes, Kost-Yes, Littlejohn-Yes, and Repke-Yes.

3:40 p.m.

RES. 2000-039 The Executive Session ended and the meeting was opened to the public. Ms. Abele moved that the Board adopt the following Order in the matter of Jeffery Scott Dannemiller, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-980707-001)

In The Matter Of:

JEFFREY SCOTT DANNEMILLER, R.Ph.
1252 Ashwood Road
Akron, Ohio 44312
(R.Ph. No. 03-3-16019)

INTRODUCTION

THE MATTER OF JEFFREY SCOTT DANNEMILLER CAME TO HEARING ON SEPTEMBER 7, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JEFFREY SCOTT DANNEMILLER 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

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Summary Suspension Order/Notice of Opportunity for Hearing letter of Jeffrey Scott Dannemiller dated July 7, 1998.
- (2) Exhibit 1A--Copy of Hearing Request letter from Jeffrey S. Dannemiller, not dated, received in the Board office on August 7, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated August 11, 1998.
- (4) Exhibit 1C--Letter of Representation from Daniel D. Connor dated October 16, 1998.
- (5) Exhibit 1D--Continuance Request letter dated October 28, 1998.
- (6) Exhibit 1E--Copy of Hearing Schedule letter dated November 5, 1998.
- (7) Exhibit 1F--Continuance Request letter dated April 8, 1999.
- (8) Exhibit 1G--Copy of Hearing Schedule letter dated April 13, 1999.
- (9) Exhibit 1H--Copy of Hearing Schedule letter dated August 20, 1999.
- (10) Exhibit 1I--Copy of Pharmacist File Front Sheet of Jeffrey S. Dannemiller showing original date of registration as August 2, 1985; and two-page copy of Renewal Application for Pharmacist License No. 03-3-16019 for a license to practice pharmacy in Ohio from September 15 1997, to September 15, 1998 of Jeffrey Scott Dannemiller dated August 4, 1997.
- (11) Exhibit 1J--Copy of Continuance Request letter dated September 7, 1999.
- (12) Exhibit 2--Copy of six-page Summary Suspension Order of Jeffrey Scott Dannemiller dated January 24, 1995.
- (13) Exhibit 3--Copy of ten-page Order of the State Board of Pharmacy, Docket No. D-950124-033, in the matter of Jeffrey Scott Dannemiller dated December 8, 1995.
- (14) Exhibit 4--Copy of five-page Order of the State Board of Pharmacy, Docket No. D-960820-010, in the matter of Jeffrey Scott Dannemiller dated March 13, 1997.
- (15) Exhibit 5--Two-page copy of Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of Jeffrey S. Dannemiller dated March 17, 1997.
- (16) Exhibit 5A--Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheet/-Client Monitoring Sheet regarding Jeff Dannemiller for the period from January 1, 1998, to March 31, 1998, with the following attachments: two-page copy of urine drug screen report of Jeff Dannemiller dated February 23, 1998 and copy of three pages of Verification of AA Attendance of Jeff Dannemiller dated from December 30, 1997, through March 29, 1998.
- (17) Exhibit 5B--Letter from Chris Lindskog dated December 23, 1997, and attached two-page copy of urine drug screen report of Jeff Dannemiller dated December 22, 1997.
- (18) Exhibit 5C--Letter from Chris Lindskog dated February 25, 1998, and attached two-page copy of urine drug screen report of Jeff Dannemiller dated February 23, 1998.
- (19) Exhibit 6--Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheet/-Client Monitoring Sheet regarding Jeff Dannemiller dated from April 1, 1998, through June 30, 1998, with the following attachments: two-page copy of urine drug screen report of Jeff Dannemiller dated June 12, 1998, and two-page copy of urine drug screen report of Jeff Dannemiller dated May 13, 1998.
- (20) Exhibit 6A--Letter from Christine Lindskog dated May 13, 1998, and attached two-page urine drug screen report dated May 13, 1998.
- (21) Exhibit 7--Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheet regarding Jeff Dannemiller for the period from July 1, 1998, to September 30, 1998.
- (22) Exhibit 8--Letter from Jeffrey S. Dannemiller, not dated, received in the Board office of January 14, 1998.
- (23) Exhibit 9--Letter from Jeffrey S. Dannemiller, not dated, received in the Board office on April 16, 1998.
- (24) Exhibit 10--Copy of letter from Christine Lindskog dated July 17, 1998.
- (25) Exhibit 11--Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheet regarding Jeff Dannemiller for the period from October 1, 1998, to December 31, 1998.
- (26) Exhibit 12--Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheet regarding Jeff Dannemiller for the period from January 1, 1999, to March 31, 1999.
- (27) Exhibit 13--Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheet regarding Jeff Dannemiller for the period from April 1, 1999, to June 30, 1999.
- (28) Exhibit 14--Copy of letter from David W. Baker dated August 1, 1999.

Respondent's Exhibits:

- (1) None

FINDINGS OF FACT

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

- (1) Records of the Board indicate that Jeffrey Scott Dannemiller was originally licensed to practice pharmacy in the state of Ohio on August 2, 1985, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that Jeffrey Scott Dannemiller was suspended from the practice of pharmacy from January 24, 1995, through March 12, 1997. Upon reinstatement, on March 13, 1997, Jeffrey Scott Dannemiller's license was placed on probation for a period of five years.
- (2) Jeffrey Scott Dannemiller 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: Jeffrey Scott Dannemiller has admitted being addicted to controlled substances; Jeffrey Scott Dannemiller has been previously suspended from the practice of pharmacy because of his addiction; Jeffrey Scott Dannemiller has been placed on probation by the Board during a period of rehabilitation; and, Jeffrey Scott Dannemiller relapsed into his addiction and consumed Darvon, a controlled substance, in violation of Section 2925.11 of the Ohio Revised Code. Such conduct indicates that Jeffrey Scott Dannemiller falls within the ambit of Sections 3719.121(A), 3719.121(B), and 4729.16(A)(3) of the Ohio Revised Code.

CONCLUSION OF LAW

Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Jeffrey Scott Dannemiller:

Pursuant to Section 4729.16 of the Ohio Revised Code, and on the basis of the Findings of Fact and Conclusion of Law set forth above, the State Board of Pharmacy hereby permanently revokes the pharmacist identification card, No. 03-3-16019, held by Jeffrey Scott Dannemiller 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 the identification card and license [wall certificate] 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. Repke and approved by the Board (Aye-7 / Nay-0).

3:45 p.m.

The Board recessed the meeting until Wednesday, September 8, 1999.

WEDNESDAY, SEPTEMBER 8, 1999

8:46 a.m. ROLL CALL

The State Board of Pharmacy convened in Room 1952, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Robert B. Cavendish, R.Ph. (President); Diane C. Adelman, R.Ph. (Vice-President); Ann D. Abele, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Lawrence J. Kost, R.Ph.; Amonte B. Littlejohn, R.Ph.; Suzanne L. Neuber, R.Ph, and Nicholas R. Repke, Public Member.

Mr. Winsley distributed copies of a letter that had been received from Frederick N. Karaffa, M.D., Medical Director at Shepherd Hill Hospital. Dr. Karaffa's letter asked the Board to consider adding Ultram (tramadol) to the list of controlled substances in Ohio due to the large number of patients he has had to treat for withdrawal from the drug. The Board instructed the staff to investigate the possibility of complying with Dr. Karaffa's request.

William McMillen, Licensing Administrator, joined the meeting. He and Ms. Abele reported on the first meeting of the Ad Hoc Committee on Emergency Medical Services Rules. Proposed rules will be developed by the committee in time for the Board to consider them in October.

9:09 a.m.

Ms. Abele reported on the August 15, 1999 meeting of the Nursing Formulary Committee. Mr. Winsley reported he had been asked to attend the Medical Board's Prescribing Committee later that morning.

9:15 a.m.

The Board 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 Michael A. Misocky, Esq., R.Ph., Germantown, MD.

9:41 a.m.

After a recess to review the documentation for the case, Mr. Kost announced that he would recuse himself from the hearing and would not participate in any discussion or deliberation of this matter.

10:33 a.m.

The hearing ended and the record was closed. The Board took a brief recess.

11:02 a.m.

Mr. Benedict distributed copies of a letter sent by the Drug Enforcement Administration (DEA) to the National Association of State Controlled Substance Authorities (NASCSA) regarding DEA's contingency plans for possible Y2K problems. This letter was distributed for the Board members' information as no action was needed by the Board at this time.

11:10 a.m.

Ms. Abele moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against licensees or registrants pursuant to Section 121.22(G)(1) of the Revised Code. Mr. Giacalone seconded the motion. President Cavendish then conducted the following roll call vote: Abele-Yes, Adelman-Yes, Eastman-Yes, Giacalone-Yes, Littlejohn-Yes, Neuber-Yes, and Repke-Yes.

11:25 a.m.

RES. 2000-040 The Executive Session ended and the meeting was opened to the public. Ms. Abele moved that the Board adopt the following Order in the matter of Michael A. Misocky, Esq., R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-990219-030)

In The Matter Of:

MICHAEL A. MISOCKY, R.Ph.
4 B Locbury Court
Germantown, MD 20874
(R.Ph. No. 03-2-21342)

INTRODUCTION

THE MATTER OF MICHAEL A. MISOCKY CAME TO HEARING ON SEPTEMBER 8, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

MICHAEL A. MISOCKY 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) Louis R. Mandi, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing dated February 19, 1999.
- (2) Exhibit 1A--Copy of three-page Addendum Notice dated May 17, 1999.
- (3) Exhibit 1B--Two-page Memorandum from Michael A. Misocky dated March 19, 1999.
- (4) Exhibit 1C--Copy of Scheduling Letter dated March 23, 1999.
- (5) Exhibit 1D--Continuance Request letter dated April 16, 1999.
- (6) Exhibit 1E--Hearing Schedule letter dated April 28, 1999.
- (7) Exhibit 2--Copy of prescription for Coumadin 2mg and copy of prescription label numbered 0239944507 dated June 26, 1997.
- (8) Exhibit 3A--Copy of letter from Thomas W. Lally dated August 17, 1999.
- (9) Exhibit 3B--Copy of "Notice and Release and Settlement of Claim", File No. P303-153108-01, dated February 12, 1999.
- (10) Exhibit 4--Copy of prescription for Ultram 50mg dated August 28, 1998.
- (11) Exhibit 5--Copy of prescription for Propulsid (*sic* Propulsid) 10mg dated September 4, 1998.
- (12) Exhibit 6--Copy of handwritten statement of Normalee Kerr Stuart dated April 28, 1999.
- (13) Exhibit 7--Copy of handwritten statement of Gina Bady dated April 29, 1999.
- (14) Exhibit 8--Copy of handwritten statement of Andy Sperling, not dated.

Respondent's Exhibits:

- (1) Exhibit A--Five-page letter from Michael A. Misocky, not dated.

FINDINGS OF FACT

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

- (1) On February 19, 1999, Michael A. Misocky was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing.
- (2) As demonstrated by return receipt of February 26, 1999, Michael A. Misocky received the Notice of Opportunity for Hearing of February 19, 1999, informing him of the allegations against him, and his rights.

- (3) As demonstrated by return receipt of May 21, 1999, Michael A. Misocky received the Addendum Notice of May 17, 1999, informing him of the additional allegation against him, and his rights.
- (4) Michael A. Misocky sent his contentions in writing by letter sent Federal Express on September 1, 1999.
- (5) Records of the Board of Pharmacy indicate that Michael A. Misocky was originally licensed in the state of Ohio on August 4, 1995, pursuant to reciprocity, and that he is currently licensed to practice pharmacy in the state of Ohio.
- (6) Michael A. Misocky did, on or about June 26, 1997, sell a drug that was mis-branded, to wit: while practicing pharmacy at Rite Aid #2399, Canton, Ohio, Michael A. Misocky sold fifty-nine tablets of Coumadin 5mg to a patient, whereas the patient's prescription was for one hundred tablets of Coumadin 2mg. As a result of such conduct, the patient, an eighty-three-year-old man, was hospitalized for several days and needed two surgeries. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

CONCLUSION OF LAW

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 unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy 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. Eastman and approved by the Board (Aye-4/Nay-3).

11:28 a.m.

The Board recessed for lunch.

1:00 p.m.

RES. 2000-041 All of the Board members reconvened in Room 1948 for the purpose of meeting with the candidates for licensure by reciprocity. Following presentations by Board members and self-introductions by the candidates for licensure by reciprocity, Mrs. Adelman moved that the Board approve the following candidates for licensure. The motion was seconded by Ms. Eastman and approved by the Board (Aye-8/Nay-0).

DAVIS, THOMAS MERRICK	TEXAS
GORMAN, DENISE MARIE	PENNSYLVANIA
GREENE, RONALD SHANE	TEXAS
HONG, SAULING T.	MASSACHUSETTS
LIPKE, ANITA ANN	CONNECTICUT
MADDEN, CAROL GILLESPIE	ALABAMA
MATTOON, JENNIFER LYNN	OREGON
MINCH, SHELLEY JILL	MICHIGAN
PASSMORE, DAVID EVAN	KANSAS
ROBINSON, REBECCA TAYLOR	KENTUCKY
SANBORN, DEBORAH ANN	PENNSYLVANIA
SCHINDLER, LIBBY S.	KANSAS
SHEEHAN, KEVIN CHRISTOPHER	KENTUCKY

1:45 p.m.

RES. 2000-042 The Board reconvened in Room 1952 to continue with the business of the Board. Mr. Winsley and Mr. Benedict reported on a meeting they had attended with representatives of PocketScript, an electronic prescription program that can transmit prescriptions from a hand-held unit to a pharmacy's facsimile machine in a secure manner. Following review of the system, the Board members indicated that the system would appear to meet the Board's requirements for security, but that a change to Administrative Code Rule 4729-5-30 (Manner of issuance of prescription) would be needed before the system could be implemented. Mr. Benedict was instructed to prepare a proposed change to the rule for the Board's consideration so that this issue could be resolved as part of this year's rule review process.

2:20 p.m.

The Board 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 matters of Dean Keith Gross, R.Ph., Newark, OH; Goldie B. Ohde, R.Ph., Newark, OH; and Penny E. Mattern, R.Ph., Madison, WI.

4:16 p.m.

The hearing ended and the record was closed. Mr. Winsley reported on his meeting with the Medical Board's Prescribing Committee earlier that day. Items of discussion included the Medical Board's Diet Rule and Senate Bill 172. Mr. Winsley reported that the Prescribing Committee displayed a very favorable attitude towards Senate Bill 172.

4:25 p.m.

Ms. Abele moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against licensees or registrants pursuant to Section 121.22(G)(1) of the Revised Code. Mrs. Adelman seconded the motion. President Caven-dish then conducted the following roll call vote: Abele-Yes, Adelman-Yes, Eastman-Yes, Giacalone-Yes, Kost-Yes, Littlejohn-Yes, Neuber-Yes, and Repke-Yes.

5:30 p.m.

RES. 2000-043 The Executive Session ended and the meeting was opened to the public. Mr. Giacalone moved that the Board adopt the following Order in the matter of Dean Keith Gross, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-990311-037)

In The Matter Of:

DEAN KEITH GROSS, R.Ph.
864 Dietrich Street
Newark, Ohio 43055
(R.Ph. No. 03-3-11678)

INTRODUCTION

THE MATTER OF DEAN KEITH GROSS CAME TO HEARING ON SEPTEMBER 8, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

DEAN KEITH GROSS WAS REPRESENTED BY DANIEL D. CONNOR, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) William L. Padgett, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Robert Wagonblott, R.Ph., Meijer Stores
- (2) Dean Keith Gross, R.Ph., Respondent
- (3) Goldie B. Ohde, R.Ph.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing dated March 11, 1999.
- (2) Exhibit 1A--Continuance Request letter submitted by Daniel D. Connor dated May 18, 1999.
- (3) Exhibit 1B--Hearing Request letter dated March 23, 1999.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated March 26, 1999.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated May 26, 1999.
- (6) Exhibit 1E--Copy of Pharmacist File Front Sheet of Dean Keith Gross showing original date of registration as August 4, 1976; and two-page copy of Renewal Application for Pharmacist License No. 03-3-11678 for a license to practice pharmacy in Ohio from September 15, 1998 to September 15, 1999, of Dean Keith Gross dated July 29, 1998.
- (7) Exhibit 2--Doctor Notes of Marla D. Michaels, M.D. on patient Alvina Richardson dated January 22, 1998.
- (8) Exhibit 3--Copy of Meijer #49 "Medical Expenses" report of patient Alvina R. Richardson for January 1, 1996 to January 27, 1998.
- (9) Exhibit 4--Copy of "Meijer Pharmacy Phone Order" for patient Alveena (*sic* Alvina) Richardson for K[C]lonidine 0.5mg, #60 (sixty), 1/2 QID, dated January 22, 1998.
- (10) Exhibit 5--Copy of prescription label numbered 4118068.
- (11) Exhibit 6--Handwritten statement of Penny Mattern dated January 27, 1998.
- (12) Exhibit 7--Copy of Meijer "Pharmacy Discrepancy and Incident Report" and "Supplemental Investigation Report" completed by Michelle Lake dated January 26, 1998.
- (13) Exhibit 8--Dangerous Drug Distributor Inspection Report for Meijer, Inc. #49 dated January 27, 1998.

Respondent's Exhibits:

- (1) Exhibit A--Manila file folder containing the following documents: Two-page Affidavit of Penny E. Mattern dated August 30, 1999; copy of three-page letter from Daniel D. Connor regarding Dean Keith Gross dated August 4, 1999; copy of three-page letter from Daniel D. Connor regarding Penny Ellen Mattern dated August 4, 1999; and copy of three-page letter from Daniel D. Connor regarding Goldie Ohde dated August 4, 1999 with the following attachments: copy of letter from Kerrie A. Foxall, R.Ph. dated July 23, 1999; copy of letter from W. Richard Waddle dated July 20, 1999; and copy of letter from Vira L. Penrod-Wise dated July 29, 1999.

FINDINGS OF FACT

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

- (1) Records of the State Board of Pharmacy indicate that Dean Keith Gross was originally licensed in the state of Ohio on August 4, 1976, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further indicate that Dean Keith Gross is the Responsible Pharmacist at Meijer, Inc. #49 pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code. Several errors when dispensing have occurred in this pharmacy in recent years.
- (2) Dean Keith Gross did, on or about January 22, 1998, record a telephone prescription which caused the sale of a misbranded drug, to wit: when presented with information via telephone for Clonidine 0.1mg, Dean Keith Gross wrote the drug name (beginning with the letter "K", partially correcting it, making a "C"). Further, Dean Keith Gross recorded the strength as 0.5mg when the order was for 0.1mg. As

Responsible Pharmacist, Dean Keith Gross or a pharmacist under his supervision sold a vial to a 7-year-old patient's mother which contained Clonazepam 0.5mg. The patient took the medication as stated in the directions for use and was severely harmed psychologically, to wit: she attempted to stab her brother with a knife and she attempted to jump out a second-story window. Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.

- (3) Dean Keith Gross as the Responsible Pharmacist did, on or about January of 1998, fail to ensure compliance with prospective drug utilization review and patient counseling regulations, to wit: an incorrect entry in the computer system was not detected by a pharmacist; and, after prescription number 4118068 had been dispensed to a patient and the patient's parent called to ask questions, Dean Keith Gross or a pharmacist under his supervision failed to review the original prescription and/or refill information for over-utilization, incorrect drug, drug dosage and duration of drug treatment, and/or misuse. Further, Dean Keith Gross or a pharmacist under his supervision failed to offer patient counseling. The patient had been prescribed Clonidine 0.1mg but was dispensed Clonazepam 0.5mg. When the patient's mother called to inquire about the wrong drug, Dean Keith Gross or a pharmacist under his supervision simply dismissed the inquiry as "probably a generic," even though he had the knowledge, resources, and capability to correct the error and prevent patient harm. Such conduct is in violation of Rule 4729-5-22 of the Ohio Administrative Code.

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

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby admonishes Dean Keith Gross for his actions in this matter.

Further, the Board confirms the importance of appropriate patient counseling and of careful prospective drug utilization review by the use of current patient profiles for every prescription filled.

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-1).

RES. 2000-044 Mrs. Neuber moved that the Board adopt the following Order in the matter of Penny E. Mattern, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-990311-038)

In The Matter Of:

PENNY ELLEN MATTERN, R.Ph.
4723 Sheboygan Avenue, Apt. 104
Madison, Wisconsin 53705
(R.Ph. No. 03-2-15391)

INTRODUCTION

THE MATTER OF PENNY ELLEN MATTERN CAME TO HEARING ON SEPTEMBER 8, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

PENNY ELLEN MATTERN WAS NOT PRESENT AND WAS REPRESENTED BY DANIEL D. CONNOR, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) William L. Padgett, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Robert Wagonblott, R.Ph., Meijer Stores
- (2) Dean Keith Gross, R.Ph.
- (3) Goldie B. Ohde, R.Ph.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing dated March 11, 1999.
- (2) Exhibit 1A--Continuance Request letter submitted by Daniel D. Connor dated May 18, 1999.
- (3) Exhibit 1B--Hearing Request letter dated March 22, 1999.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated May 26, 1999.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated March 30, 1999.
- (6) Exhibit 1E--Copy of Pharmacist File Front Sheet of Penny Ellen (Hunter) Mattern showing original date of registration as March 1, 1984; and two-page copy of Renewal Application for Pharmacist License No. 03-1-15391 for a license to practice pharmacy in Ohio from September 15, 1998 to September 15, 1999, of Penny Ellen Mattern dated July 27, 1998.
- (7) Exhibit 2--Doctor Notes from Marla D. Michaels, M.D. on patient Alvina Richardson dated January 22, 1998.
- (8) Exhibit 3--Copy of Meijer #49 "Medical Expenses" report of patient Alvina R. Richardson for January 1, 1996 to January 27, 1998.
- (9) Exhibit 4--Copy of "Meijer Pharmacy Phone Order" for patient Alveena (*sic* Alvina) Richardson for K[C]lonidine 0.5mg, #60 (sixty), 1/2 QID, dated January 22, 1998.
- (10) Exhibit 5--Copy of prescription label numbered 4118068.
- (11) Exhibit 6--Handwritten statement of Penny Mattern dated January 27, 1998.

- (12) Exhibit 7--Copy of Meijer "Pharmacy Discrepancy and Incident Report" and "Supplemental Incident Report" completed by Michelle Lake dated January 26, 1998.
- (13) Exhibit 8--Dangerous Drug Distributor Inspection Report for Meijer, Inc. #49 dated January 27, 1998.

Respondent's Exhibits:

- (1) Exhibit A--Manila file folder containing the following documents: Two-page affidavit of Penny E. Mattern dated August 30, 1999; copy of three-page letter from Daniel D. Connor regarding Dean Keith Gross dated August 4, 1999; copy of three-page letter from Daniel D. Connor regarding Penny Ellen Mattern dated August 4, 1999; and copy of three-page letter from Daniel D. Connor regarding Goldie Ohde dated August 4, 1999 with the following attachments: copy of letter from Kerrie A. Foxall, R.Ph. dated July 23, 1999; copy of letter from W. Richard Waddle dated July 20, 1999; and copy of letter from Vira L. Penrod-Wise dated July 29, 1999.

FINDINGS OF FACT

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

- (1) Records of the State Board of Pharmacy indicate that Penny Ellen Mattern was originally licensed in the state of Ohio on March 1, 1984, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) Penny Ellen Mattern did, on or about January 22, 1998, sell a misbranded drug, to wit: when presented with a prescription for Clonidine, Penny Ellen Mattern sold a vial to a seven-year-old patient's mother which contained Clonazepam. The patient took the medication as stated in the directions for use and was thus severely harmed psychologically, to wit: she attempted to stab her brother with a knife, she attempted to jump out a second-story window, and she missed school and had to be held back a year. Such conduct is in violation of Section 3715.52 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 (2) of the Findings of Fact constitutes being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Sections 3715.52 to 3715.72 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 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. Eastman and approved by the Board (Aye-5/Nay-3).

RES. 2000-045 Mrs. Neuber then moved that the Board adopt the following Order in the matter of Goldie B. Ohde, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-990311-039)

In The Matter Of:

GOLDIE B. OHDE, R.Ph.
5750 Cotterman Road
Newark, Ohio 43056
(R.Ph. No. 03-1-10252)

INTRODUCTION

THE MATTER OF GOLDIE B. OHDE CAME TO HEARING ON SEPTEMBER 8, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

GOLDIE B. OHDE WAS REPRESENTED BY DANIEL D. CONNOR, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) William L. Padgett, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Robert Wagonblott, R.Ph., Meijer Stores
- (2) Dean Keith Gross, R.Ph.
- (3) Goldie B. Ohde, R.Ph., Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing dated March 11, 1999.
- (2) Exhibit 1A--Continuance Request letter submitted by Daniel D. Connor dated May 18, 1999.
- (3) Exhibit 1B--Hearing Request letter dated March 23, 1999.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated March 29, 1999.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated May 26, 1999.
- (6) Exhibit 1E--Copy of Pharmacist File Front Sheet of Goldie Bernice Ohde showing original date of registration as July 20, 1972; and two-page copy of Renewal Application for Pharmacist License No. 03-1-10252 for a license to practice pharmacy in Ohio from September 15, 1998 to September 15, 1999, of Goldie B. Ohde dated July 13, 1998.
- (7) Exhibit 2--Doctor Notes of Marla D. Michaels, M.D. on patient Alvina Richardson dated January 22, 1998.
- (8) Exhibit 3--Copy of Meijer #49 "Medical Expenses" report of patient Alvina R. Richardson for January 1, 1996 to January 27, 1998.
- (9) Exhibit 4--Copy of "Meijer Pharmacy Phone Order" for patient Alveena (*sic* Alvina) Richardson for K[C]lonidine 0.5mg, #60 (sixty), 1/2 QID, dated January 22, 1998.
- (10) Exhibit 5--Copy of prescription label numbered 4118068.
- (11) Exhibit 6--Handwritten statement of Penny Mattern dated January 27, 1998.
- (12) Exhibit 7--Copy of Meijer "Pharmacy Discrepancy and Incident Report" and "Supplemental Investigation Report" completed by Michelle Lake, dated January 26, 1998.

- (13) Exhibit 8--Dangerous Drug Distributor Inspection Report for Meijer, Inc. #49 dated January 27, 1998.

Respondent's Exhibits:

- (1) Exhibit A--Manila file folder containing the following documents: Two-page affidavit of Penny E. Mattern dated August 30, 1999; copy of three-page letter from Daniel D. Connor regarding Dean Keith Gross dated August 4, 1999; copy of three-page letter from Daniel D. Connor regarding Penny Ellen Mattern dated August 4, 1999; and copy of three-page letter from Daniel D. Connor regarding Goldie Ohde dated August 4, 1999 with the following attachments: copy of letter from Kerrie A. Foxall, R.Ph. dated July 23, 1999; copy of letter from W. Richard Waddle dated July 20, 1999; and copy of letter from Vira L. Penrod-Wise dated July 29, 1999.

FINDINGS OF FACT

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

- (1) Records of the State Board of Pharmacy indicate that Goldie B. Ohde was originally licensed in the state of Ohio on July 20, 1972, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) Goldie B. Ohde did, on or about January of 1998, fail to perform patient counseling, to wit: after prescription number 4118068 had been dispensed to a patient and the patient's parent called to ask questions, Goldie B. Ohde failed to review the original prescription and/or refill information for over-utilization, incorrect drug dosage and duration of drug treatment, and/or misuse; and she failed to offer patient counseling. The patient had been prescribed Clonidine but was dispensed Clonazepam. When the patient's mother called to inquire about the wrong drug, Goldie B. Ohde simply dismissed the inquiry as "probably a generic," even though she had the knowledge, resources, and capability to correct the error and prevent patient harm. Such conduct is in violation of Rule 4729-5-22 of the Ohio Administrative Code.

CONCLUSION OF LAW

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

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, 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 Mr. Repke and approved by the Board (Aye-8/Nay-0).

5:37 p.m.

The Board recessed the meeting until Thursday, September 9, 1999.

THURSDAY, SEPTEMBER 9, 1999

8:40 a.m. ROLL CALL

The State Board of Pharmacy convened in Room 1952, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Robert B. Cavendish, R.Ph. (President); Diane C. Adelman, R.Ph. (Vice-President); Ann D. Abele, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Lawrence J. Kost, R.Ph.; Amonte B. Littlejohn, R.Ph.; Suzanne L. Neuber, R.Ph, and Nicholas R. Repke, Public Member.

The Board discussed several items of business not requiring formal action by the Board.

Mr. Winsley presented proposed changes to the Internal Management rules of the Board as found in Chapter 4729-2 of the Administrative Code. After discussion, the Board members instructed Mr. Winsley to bring the rules back for a final review after the Board's changes were included.

9:53 a.m.

The Board took a brief recess.

10:28 a.m.

RES. 2000-046 Mr. Benedict presented a request for a waiver pursuant to Ohio Administrative Code Rule 4729-5-11. Following discussion, Ms. Eastman moved that the request of Lawrence Brach, R.Ph. for approval to serve as the responsible pharmacist at the following sites be approved for one year:

St. Luke's Hospital (02-0030550)
Fallen Timbers Apothecary (02-0349050)

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

RES. 2000-047 Mr. Benedict and Mr. McMillen then presented the documentation and report on the Envoy Medication System that was being installed in a nursing home in the Columbus area. After a review of the system, Ms. Eastman moved that the Board consider the system to be approvable as long as the security measures needed were properly implemented. The motion was seconded by Mrs. Neuber and approved by the Board (Aye-8/Nay-0).

RES. 2000-048 Mr. Benedict and Mr. Winsley then discussed the ADDS, Inc. Telepharmacy Solutions system. The consensus of the Board was that this method of drug delivery would also be approvable with the proper security measures.

Mr. Benedict presented a proposed revision to Rule 4729-5-30 of the Administrative Code for the Board members' review. After discussion, the members were satisfied that this change would allow computer-to-facsimile machine transmissions in a secure manner. Mr. Benedict was instructed to include this rule in the packet of rules for final consideration that were to be presented to the Board in October.

Mr. Benedict then discussed the proposed rules and rule changes that had been developed by the Ad Hoc Committee on Rule Review. These rules, with the Board's changes, will be considered again at the October Board meeting.

12:05 p.m.

The Board recessed for lunch.

1:15 p.m.

The Board reconvened in Room 1952, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Robert B. Cavendish, R.Ph. (President); Ann D. Abele, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Lawrence J. Kost, R.Ph.; Amonte B. Littlejohn, R.Ph.; Suzanne L. Neuber, R.Ph.; and Nicholas R. Repke, Public Member.

RES. 2000-049 David Rowland, Legal Affairs Administrator, joined the Board to present a continuance request for the hearing in the matter of Medicine Shoppe/Gentle Ben's Pharmacy that was scheduled to begin immediately. Mr. Repke moved to deny the request and proceed to the hearing. The motion was seconded by Ms. Abele and approved by the Board (Aye-7/Nay-0).

1:23 p.m.

The Board 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 matters of The Medicine Shoppe, Dayton, and Gentle Ben's Pharmacy, Dayton.

2:20 p.m.

The hearing ended and the record was closed. The Board took a brief recess.

2:35 p.m.

Mrs. Neuber moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against licensees or registrants pursuant to Section 121.22(G)(1) of the Revised Code. Mr. Repke seconded the motion. President Cavendish then conducted the following roll call vote: Abele-Yes, Eastman-Yes, Giacalone-Yes, Kost-Yes, Littlejohn-Yes, Neuber-Yes, and Repke-Yes.

3:10 p.m.

RES. 2000-050 The Executive Session ended and the meeting was opened to the public. Mrs. Neuber moved that the Board adopt the following Order in the matter of The Medicine Shoppe, Dayton:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-990715-003)

In The Matter Of:

THE MEDICINE SHOPPE
c/o Joseph B. Bush, Jr.
542 Wilmington Avenue
Dayton, Ohio 45420
(Terminal Distributor No. 02-0956100)

INTRODUCTION

THE MATTER OF THE MEDICINE SHOPPE CAME TO HEARING ON SEPTEMBER 9, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

THE MEDICINE SHOPPE WAS NOT REPRESENTED BY COUNSEL NOR BY OTHER REPRESENTATIVE(S), AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Frederick C. Williams, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter of The Medicine Shoppe, Terminal Distributor No. 02-0956100, dated July 15, 1999.
- (2) Exhibit 1A--Copy of three-page Proposal to Deny/Notice of Opportunity for Hearing letter of Gentle Ben's Pharmacy dated July 15, 1999.
- (3) Exhibit 1B--Copy of two-page Application for Registration as a Terminal Distributor of Dangerous Drugs signed by Gregory Thomas Fisher dated August 30, 1996, with the following attachments: hand-written fax cover sheet to Attention of Erica; copy of two-page Original Appointment of Statutory Agent of Gentle Ben, Inc. dated February 15, 1996; and copy of two-page Articles of Incorporation of Gentle Ben Inc. dated February 26, 1996.
- (4) Exhibit 1C--Copy of two-page Application for Registration as a Terminal Distributor of Dangerous Drugs signed by Lacy G. Calhoun, received in the Board office on June 30, 1999.
- (5) Exhibit 1D--Hearing Request letter from Joseph B. Bush, Jr. dated August 12, 1999.
- (6) Exhibit 1E--Copy of Hearing Schedule letter dated August 16, 1999.
- (7) Exhibit 1F--Copy of hand-written fax coversheet to Attention of Ohio State Board of Pharmacy from Joseph B. Bush, Jr. and copy of two-page letter from Joseph B. Bush, Jr. dated September 9, 1999.
- (8) Exhibit 2--Copy of two-page Dangerous Drug Distributor Inspection Report of The Medicine Shoppe, Terminal Distributor No. 02-0956100, dated May 7, 1998; and two-page copy of Pink Sheet response, not dated, received in the Board office on May 28, 1998.
- (9) Exhibit 3--Copy of Dangerous Drug Distributor Inspection Report of The Medicine Shoppe, Terminal Distributor No. 02-0956100, dated June 22, 1999.
- (10) Exhibit 4--Copy of two-page Dangerous Drug Distributor Inspection Report of The Medicine Shoppe, Terminal Distributor No. 02-0956100, dated June 29, 1999.
- (11) Exhibit 5--Handwritten statement of Sherry L. Wimmers, R.Ph. dated June 25, 1999.
- (12) Exhibit 6--Prescription number 6301456.
- (13) Exhibit 7--Prescription number 4301445.
- (14) Exhibit 8--Handwritten statement of Joseph B. Bush, Jr. dated June 29, 1999.
- (15) Exhibit 9--Copy of two U.S. Official Order Forms-Schedules I & II of Gentle Ben, Inc. numbered and dated as follows: 973821889 dated January 5, 1998, and 973821892 dated February 2, 1998.
- (16) Exhibit 10--Handwritten statement of Lacy G. Calhoun dated July 6, 1999.
- (17) Exhibit 11--Copy of three-page fax as follows: cover page from Lacy Calhoun dated July 13, 1999, and two-page letter from Lacy Calhoun dated July 12, 1999.
- (18) Exhibit 12--Copy of Renewal Application for DDD License, No. 02-0956100, for a Terminal Distributor of Dangerous Drugs License from January 1, 1999, to December 31, 1999, of The Medicine Shoppe signed by James C. Carey on January 4, 1999, and attached statement signed by Joseph B. Bush, Jr. and James C. Carey dated January 1, 1999.
- (19) Exhibit 12A--Copy of letter from James C. Carey dated February 9, 1999.
- (20) Exhibit 13--Handwritten statement of Myron E. Retske dated June 22, 1999.
- (21) Exhibit 14--8"x10" color photograph of Frederick C. Williams standing in front of Gentle Ben's Pharmacy (a.k.a. The Medicine Shoppe).
- (22) Exhibit 15--Certified copy of four-page Corrected Judgment Entry and Decree of Foreclosure, Termination Entry, Final Appealable Order, Bank One, N.A. v. Richard L. Jarvis, et al., Case No. 98-3051, in the Common Pleas Court of Montgomery County, Ohio, Civil Division dated June 9, 1999.

Respondent's Exhibits:

- (1) None

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Joseph J. Bush, Jr. is the owner of The Medicine Shoppe, 542 Wilmington Avenue, Dayton, Ohio.
- (2) The Medicine Shoppe did, prior to June 30, 1999, fail to record required information when dispensing prescriptions, to wit: The Medicine Shoppe failed to record prescription information such as dispensing pharmacist initials and/or the brand or generic manufacturer. Further, even though The Medicine Shoppe was utilizing daily printouts as the method of compliance with Rule 4729-5-28(C) of the Administrative Code, printouts were not being run daily and/or were not signed or initialed by the dispensing pharmacist. Such conduct is in violation of Rules 4729-5-27 and 4729-5-30 of the Ohio Administrative Code and Sections 3719.05, 4729.37, and 4729.38 of the Ohio Revised Code.
- (3) The Medicine Shoppe did, on or about June 22, 1999, fail to provide personal supervision of the dangerous drugs, to wit: The Medicine Shoppe was open for business, yet unattended by a pharmacist to assure the security and control for the dangerous drugs and adequate safeguards against diversion as required by Rules 4729-9-05 and 4729-9-11 of the Ohio Administrative Code and Sections 4729.27 and 4729.55 of the Ohio Revised Code.
- (4) The Medicine Shoppe did, prior to June 29, 1999, fail to properly execute controlled substance order forms, i.e. D.E.A. 222 forms, to wit: when drugs were received by The Medicine Shoppe pursuant to D.E.A. 222 forms, the forms were not properly completed. Such conduct is in violation of Rule 4729-9-14 of the Ohio Administrative Code, Section 3719.07 of the Ohio Revised Code, and Section 1305.06 of the Code of Federal Regulations.
- (5) The Medicine Shoppe did, on or about June 22, 1999, allow a person other than a pharmacist to practice pharmacy and to be in full and actual charge of the pharmacy, to wit: the owner of The Medicine Shoppe, Joseph Bush, a technician, dispensed drugs without the supervision of a pharmacist. Such conduct is in violation of Rule 4729-5-11 of the Ohio Administrative Code, and Sections 4729.27 and 4729.28 of the Ohio Revised Code.
- (6) The Medicine Shoppe did, on or about June 22, 1999, sell, at retail, dangerous drugs, to wit: the owner of The Medicine Shoppe, Joseph Bush, a technician, dispensed drugs pursuant to prescriptions numbered 4302207 and 6302206. Such conduct is in violation of Rule 4729-5-09 of the Ohio Administrative Code and Section 4729.51(C) 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 violating rules of the Board as provided in Division (A)(2) of Section 4729.57 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2), (3), (5), and (6) of the Findings of Fact constitute violating provisions of Chapter 4729. of the Revised Code as provided in Division (A)(3) of Section 4729.57 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (4) through (6) of the Findings of Fact constitute violating provisions of the federal drug abuse control laws or Chapter 2925. or 3719. of the Revised Code as provided in Division (A)(5) of Section 4729.57 of the Ohio Revised Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes ceasing to satisfy the qualifications of a terminal distributor of dangerous drugs set forth in Section 4729.55 of the Revised Code as provided in Division (A)(7) of Section 4729.57 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.57 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of The Medicine Shoppe:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor license, No. 02-0956100, held by The Medicine Shoppe effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor license, No. 02-0956100, held by The Medicine Shoppe effective as of the date of the mailing of this Order.
- (C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor license, No. 02-0956100, held by The Medicine Shoppe effective as of the date of the mailing of this Order.
- (D) On the basis of the Findings of Fact and paragraph (4) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor license, No. 02-0956100, held by The Medicine Shoppe effective as of the date of the mailing of this Order.

Division (C)(1) of Section 4729.57 of the Ohio Revised Code provides: "Upon the suspension or revocation of a license issued to a terminal distributor of dangerous drugs or the refusal by the Board to renew such a license, the distributor shall immediately surrender the license to the Board." The license should be forwarded by certified mail, return receipt requested.

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

MOTION CARRIED.

SO ORDERED.

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

RES. 2000-051 Mrs. Neuber then moved that the Board adopt the following Order in the matter of Gentle Ben's Pharmacy, Dayton:

ORDER OF THE STATE BOARD OF PHARMACY (Docket No. D-990715-002)

In The Matter Of:

GENTLE BEN'S PHARMACY
c/o Joseph B. Bush, Jr.
542 Wilmington Avenue
Dayton, Ohio 45420

INTRODUCTION

THE MATTER OF GENTLE BEN'S PHARMACY CAME TO HEARING ON SEPTEMBER 9, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

GENTLE BEN'S PHARMACY WAS NOT REPRESENTED BY COUNSEL NOR BY OTHER REPRESENTATIVE(S), AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Frederick C. Williams, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter of The Medicine Shoppe, Terminal Distributor No. 02-0956100, dated July 15, 1999.
- (2) Exhibit 1A--Copy of three-page Proposal to Deny/Notice of Opportunity for Hearing letter of Gentle Ben's Pharmacy dated July 15, 1999.
- (3) Exhibit 1B--Copy of two-page Application for Registration as a Terminal Distributor of Dangerous Drugs signed by Gregory Thomas Fisher dated August 30, 1996, with the following attachments: hand-written fax cover sheet to Attention of Erica; copy of two-page Original Appointment of Statutory Agent of Gentle Ben, Inc. dated February 15, 1996; and copy of two-page Articles of Incorporation of Gentle Ben Inc. dated February 26, 1996.
- (4) Exhibit 1C--Copy of two-page Application for Registration as a Terminal Distributor of Dangerous Drugs signed by Lacy G. Calhoun, received in the Board office on June 30, 1999.
- (5) Exhibit 1D--Hearing Request letter from Joseph B. Bush, Jr. dated August 12, 1999.
- (6) Exhibit 1E--Copy of Hearing Schedule letter dated August 16, 1999.
- (7) Exhibit 1F--Copy of hand-written fax coversheet to Attention of Ohio State Board of Pharmacy from Joseph B. Bush, Jr. and copy of two-page letter from Joseph B. Bush, Jr. dated September 9, 1999.
- (8) Exhibit 2--Copy of two-page Dangerous Drug Distributor Inspection Report of The Medicine Shoppe, Terminal Distributor No. 02-0956100, dated May 7, 1998; and two-page copy of Pink-Sheet response, not dated, received in the Board office on May 28, 1998.
- (9) Exhibit 3--Copy of Dangerous Drug Distributor Inspection Report of The Medicine Shoppe, Terminal Distributor No. 02-0956100, dated June 22, 1999.
- (10) Exhibit 4--Copy of two-page Dangerous Drug Distributor Inspection Report of The Medicine Shoppe, Terminal Distributor No. 02-0956100, dated June 29, 1999.
- (11) Exhibit 5--Handwritten statement of Sherry L. Wimmers, R.Ph. dated June 25, 1999.
- (12) Exhibit 6--Prescription number 6301456.
- (13) Exhibit 7--Prescription number 4301445.
- (14) Exhibit 8--Handwritten statement of Joseph B. Bush, Jr. dated June 29, 1999.
- (15) Exhibit 9--Copy of two U.S. Official Order Forms-Schedules I & II of Gentle Ben, Inc. numbered and dated as follows: 973821889 dated January 5, 1998, and 973821892 dated February 2, 1998.
- (16) Exhibit 10--Handwritten statement of Lacy G. Calhoun dated July 6, 1999.
- (17) Exhibit 11--Copy of three-page fax as follows: cover page from Lacy Calhoun dated July 13, 1999, and two-page letter from Lacy Calhoun dated July 12, 1999.
- (18) Exhibit 12--Copy of Renewal Application for DDD License, No. 02-0956100, for a Terminal Distributor of Dangerous Drugs License from January 1, 1999, to December 31, 1999, of The Medicine Shoppe signed by James C. Carey on January 4, 1999, and attached statement signed by Joseph B. Bush, Jr. and James C. Carey dated January 1, 1999.
- (19) Exhibit 12A--Copy of letter from James C. Carey dated February 9, 1999.
- (20) Exhibit 13--Handwritten statement of Myron E. Retske dated June 22, 1999.
- (21) Exhibit 14--8"x10" color photograph of Frederick C. Williams standing in front of Gentle Ben's Pharmacy (a.k.a. The Medicine Shoppe).
- (22) Exhibit 15--Certified copy of four-page Corrected Judgment Entry and Decree of Foreclosure, Termination Entry, Final Appealable Order, Bank One, N.A. v. Richard L. Jarvis, et al., Case No. 98-3051, in the Common Pleas Court of Montgomery County, Ohio, Civil Division dated June 9, 1999.

Respondent's Exhibits:

- (1) None

FINDINGS OF FACT

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

- (1) Records of the Board indicate that Joseph B. Bush, Jr. is the owner of Gentle Ben's Pharmacy, and that he applied for registration as a terminal distributor of dangerous drugs on or about June 30, 1999; however, from on or about August 30, 1996, to date, Joseph B. Bush, Jr. has been operating as The Medicine Shoppe.
- (2) Gentle Ben's Pharmacy fails to employ a pharmacist that will maintain supervision and control over the possession and custody of dangerous drugs that may be acquired by or on behalf of the applicant, to wit: on or about July 12, 1999, the Responsible Pharmacist, Lacy Calhoun resigned. Gentle Ben's Pharmacy, operating under the name and license for The Medicine Shoppe, has been operating without a Responsible Pharmacist since February 26, 1999. The pending application indicates Lacy Calhoun as the Responsible Pharmacist; however, Mr. Calhoun has since refused to act in such capacity. Such conduct is in violation of Rule 4729-5-11 of the Ohio Administrative Code and Section 4729.27 of the Ohio Revised Code.
- (3) Gentle Ben's Pharmacy is not, and on or about May 7th, June 22nd, and June 29, 1999, was not, equipped with a library containing current federal and state laws, regulations, and rules governing the legal distribution of drugs in Ohio, to wit: Gentle Ben's Pharmacy law book was incomplete and out-dated. Such conduct violates Rule 4729-9-02 of the Ohio Administrative Code.
- (4) Gentle Ben's Pharmacy did, on or about June 22, 1999, allow a person other than a pharmacist to practice pharmacy and to be in full and actual charge of the pharmacy, to wit: the owner of Gentle Ben's Pharmacy, Joseph Bush, a technician, dispensed drugs without the supervision of a pharmacist. Such conduct is in violation of Rule 4729-5-25 of the Ohio Administrative Code and Sections 4729.27 and 4729.28 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 (3) of the Findings of Fact constitutes failing to prove that the applicant is equipped as to land, buildings, and equipment to properly carry on the business of a terminal distributor of dangerous drugs within the category of licensure approved by the Board as provided in paragraph (A) of Section 4729.55 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (4) of the Findings of Fact constitute failing to prove that a pharmacist will maintain supervision and control over the possession and custody of dangerous drugs that may be acquired by or on behalf of the applicant as provided in paragraph (B) of Section 4729.55 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (4) of the Findings of Fact constitutes failing to prove that adequate safeguards are assured to prevent the sale or other distribution of dangerous drugs by any person other than a pharmacist as provided in paragraph (C) of Section 4729.55 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.55 of the Ohio Revised Code, and on the basis of the Findings of Fact and the Conclusions of Law set forth above, the State Board of Pharmacy refuses to issue a Terminal Distributor of Dangerous Drugs license to Gentle Ben's Pharmacy; and, therefore, denies the Application for Registration as a Terminal Distributor of Dangerous Drugs submitted by Joseph B. Bush, Jr.

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

MOTION CARRIED.

SO ORDERED.

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

RES. 2000-052 Ms. Eastman moved that the Board accept the settlement agreement in the matter of William Eaton Urfer, R.Ph. (03-1-08830). The agreement will become official after receipt of the signatures of all parties. The motion was seconded by Mr. Giacalone and approved by the Board (Aye-7/Nay-0).

3:16 p.m.

RES. 2000-053 Mr. Littlejohn moved that the Board approve the travel and reasonable expenses of the Public Member to the District IV meeting in November. Ms. Eastman seconded the motion and it was approved by the Board (Aye-7/Nay-0).

3:24 p.m.

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

PER DIEM	<u>08/16</u>	<u>08/31</u>	<u>09/07</u>	<u>09/08</u>	<u>09/09</u>	<u>Total</u>
Abele	1	1	1	1	1	5
Adelman	-	-	1	1	1	3
Cavendish	-	-	1	1	1	3
Eastman	-	-	1	1	1	3
Giacalone	-	-	1	1	1	3
Kost	-	-	1	1	1	3
Littlejohn	-	-	1	1	1	3
Neuber	-	-	-	1	1	2
Repke	-	-	1	1	1	3

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

3:26 p.m.

Ms. Eastman moved that the meeting be adjourned. The motion was seconded by Mrs. Neuber and approved (Aye-7/Nay-0).

/s/ Robert B. Cavendish
Robert B. Cavendish, President

/d/ 10/6/99
Date

/s/ W T Winsley
William T. Winsley, Executive Director