NOTE: The following Minutes are provided for informational purposes only. If you would like to obtain an official copy of these Minutes, please contact the Ohio Board of Pharmacy at 614/466-4143 for instructions and fee.

Minutes Of The Meeting
Ohio State Board of Pharmacy
Columbus, Ohio
April 5 & 6, 1999

MONDAY, APRIL 5, 1999

8:10 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:


Vice-President Cavendish assumed the chair for the meeting due to the planned absence of President Maslak.

RES. 99-154

William Winsley, Executive Director, informed the Board that the action taken at the March, 1999 meeting regarding the final approval of Proposed Rule 4729-7-02 would have to be repeated at this meeting. The jurisdiction of the Joint Committee on Agency Rule Review (JCARR) for this rule did not expire until March 10, 1999, one day after the Board took the action to approve the final filing of the rule. Under the laws and rules governing the implementation of rules in Ohio, the Board cannot give the final approval and instruct Board staff to file a rule until after the JCARR jurisdiction has ended. Mr. Lamping moved that the Board again give final approval to adopt Proposed Rule 4729-7-02 and instruct Board staff to file the rule with an effective date of April 15, 1999. The motion was seconded by Ms. Abele and approved (Aye-6/Nay-0).

8:20 a.m.

Mrs. Plant moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against licensees and registrants and for the consideration of personnel matters pursuant to Section 121.22(G)(1) of the Revised Code. Mr. Lamping seconded the motion. Vice-President Cavendish then conducted the following roll call vote:


9:00 a.m. Board member Amonte Littlejohn arrived and joined the meeting.

RES. 99-155

The Executive Session ended and the meeting was opened to the public. A letter from Harland Britz, attorney for Thomas Szymczak, requesting an early termination of probation for Mr. Szymczak was presented to the Board. Mrs. Plant moved that the Board deny the request for an early termination of probation for Thomas Szymczak, Docket Number D-960214-040. The motion was seconded by Mr. Lamping and approved by the Board (Aye-6/Nay-0/Abstain-1 [Littlejohn]).

9:40 a.m.

The Board took a brief recess.
The meeting resumed. The Board was joined by Timothy Benedict, Assistant Executive Director, for the discussion of agenda items. Mr. Winsley distributed a copy of a continuing education program submitted by University Consultants. University Consultants was requesting Board approval for the course to be used to meet the requirement for Board-approved jurisprudence continuing pharmacy education. The Board members were asked to review the course for discussion the next day.

**RES. 99-156** A request for clarification of Rule 4729-5-30 of the Ohio Administrative Code regarding the faxing of prescriptions was received from Bay Pharmacy, Bay Village, Ohio. Specifically, Bay Pharmacy was requesting information regarding the proper way to fax prescriptions from assisted-living facilities. After reviewing the letter and discussing the wide variety of services and levels of care that are now available from facilities who provide assisted living services, the consensus of the Board was that the faxing of prescriptions must follow the appropriate Board rule. If the facility meets the definition of an institutional facility as defined in Rule 4729-17-01, the pharmacy may follow the faxing requirements of Rule 4729-17-09. If the facility does not meet the definition of an institutional facility, then the pharmacy must follow the faxing requirements of Rule 4729-5-30, which would require the fax to come directly from the prescriber’s office or for the pharmacy to receive the original prescription prior to dispensing.

**RES. 99-157** Mr. Winsley distributed a copy of a complaint received from a physician concerning the marketing practice of a pharmacy chain. A patient on bronchodilator therapy had received an unsigned letter from the pharmacy chain requesting that the patient discuss with the physician a change in therapy to a different drug. The letter stated that the cost of the mailing had been paid for by the drug company that marketed the suggested drug. The physician involved was a specialist in pulmonary medicine who had diagnosed the patient’s severe chronic obstructive pulmonary disease and had already determined that the suggested drug was not appropriate. The physician was greatly concerned that the letter suggested to the patient that she was receiving inadequate care from her specialist and would, therefore, undermine the trust required between the physician and the patient. Furthermore, the physician was concerned that individuals who were not familiar with the patient were making inappropriate recommendations for therapy in a manner that appeared to be motivated by monetary concerns more than a concern for the patient. While they could find nothing illegal about the practice, the Board members asked Mr. Winsley to express their concern about such an inappropriate activity directly to the pharmacy chain involved.

The Board members then received a copy of a request for any proposed constitutional amendments for the National Association of Boards of Pharmacy (NABP) meeting in May. There were no amendments to the NABP Constitution suggested.

**RES. 99-158** Mr. Winsley requested Board approval to sign the State Letter of Agreement with the NABP Foundation for the 1999-2000 newsletters. Mr. Lamping moved that the Board approve the signing of the contract. The motion was seconded by Mr. Littlejohn and approved (Aye-7/Nay-0).

**RES. 99-159** Board approval for travel expenses and time to attend an invitational conference sponsored by the Drug Enforcement Administration (DEA) in Florida immediately prior to the NABP Annual Meeting in May was requested by Mr. Winsley. He asked that his time and Mr. Benedict's time be approved by the Board as work time. After reviewing the meeting's discussion topics, Mr. Lamping moved that the Board approve the attendance of Mr. Winsley and Mr. Benedict at the meeting and that their travel and meeting time be considered work time for the Board. The motion was seconded by Mr. Repke and approved by the Board (Aye-7/Nay-0).
Mr. Winsley reported on a meeting that he and William McMillen, Licensing Administrator, had attended. The meeting topic was the "Public Health Infrastructure and Our Role in Biologic Incidents" and was sponsored by the Department of Health.

RES. 99-160 Pursuant to the Board’s desire to maintain a national presence in pharmacy matters, Mr. Winsley requested Board approval for travel expenses and time to attend the National Association of Chain Drug Stores/Boards of Pharmacy meeting in San Diego from August 28, 1999 to September 1, 1999. After discussion of the meeting topics and the positive comments received from the active participation of the Board in last year's meeting, Mr. Lamping moved that the Board approve Mr. Winsley's attendance and expenses at this meeting and that his time be considered work time for the Board. The motion was seconded by Mrs. Neuber and approved by the Board (Aye-7/Nay-0).

A letter from NABP to each of its member boards of pharmacy that outlined probable changes to the candidate costs of the NAPLEX and MPJE examinations was distributed to the Board members for their information.

RES. 99-161 The Board next discussed the NABP Verified Internet Pharmacy Practice Sites (VIPPS) program. A letter of announcement for the program had been received by the Board office and copies were distributed to the Board members for review. The Board discussed concerns about the potential liability of NABP and the possible lack of effectiveness of the program as outlined in the letter. Board staff was instructed to convey the Board’s concerns to NABP as soon as possible.

RES. 99-162 Next, Mr. Benedict presented a request for a waiver pursuant to Rule 4729-5-11 of the Ohio Administrative Code. Following discussion, Mr. Lamping moved that the request of Douglas Theuring, R.Ph, for approval to serve as the responsible pharmacist at the following sites be approved for one year:

Elmwood Place Pharmacy (02-0149650)
Elmwood Institutional Pharmacy (02-0917250)

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

The response from Madison Pharmacy to the Cease and Desist Letter issued to them by the Board at the March, 1999 meeting was distributed to the Board members for their review. As the pharmacy was in the application process for a license as a Terminal Distributor of Dangerous Drugs, no further Board action was considered necessary at the present time.

11:15 a.m. Ms. Abele moved that the Minutes of the March 8 & 9, 1999 meeting be approved as corrected. Mr. Lamping seconded the motion and it was approved by the Board (Aye-7/Nay-0).

11:30 a.m. Ms. Abele then gave the Board a brief report on the activities of the Nursing Board Advanced Practice Nurse Formulary Committee.

1:00 p.m. The Board reconvened in Room 1914, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with all members present except Diane Adelman and Joseph Maslak.

1:05 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 NorthCoast Health Care.

2:10 p.m. The hearing concluded and the record was closed. The Board took a brief recess.
The meeting resumed. Mr. Lamping moved that the Board go into Executive Session for
the purpose of the investigation of charges or complaints against licensees and registrants
pursuant to Section 121.22(G)(1) of the Revised Code. Mrs. Plant seconded the motion.
Vice-President Cavendish then conducted the following roll call vote: Abele-Yes, Cavendish-
Yes, Lamping-Yes, Littlejohn-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

RES. 99-163

The Executive Session ended and the meeting was opened to the public. Mr. Repke moved
that the Board approve the request for a continuance of the hearing in the matter of Gilbert
Art that had been scheduled for Tuesday, April 6, 1999 at 1:30 p.m. The request was
made by Mr. Art's attorney, Samuel B. Weiner. The motion was seconded by Mr. Littlejohn
and approved (Aye-7/Nay-0).

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 Joseph Martin Rukse, Huntington, West Virginia.

The hearing concluded and the record was closed.

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

RES. 99-164

The Executive Session ended and the meeting was opened to the public. Mrs. Plant moved
that the Board adopt the following Order in the matter of Northcoast Health Care and that
Board staff be instructed to notify the respondent of this order as soon as possible:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-990305-034)

In The Matter Of:

NORTHCOAST HEALTH CARE GROUP, INC.
(F.K.A. INTERIM HEALTHCARE OF NORTHEAST OHIO, INC.)
c/o Lee A. Passell
3645 Warrensville Center Road, Suite 124
Shaker Heights, Ohio  44122

INTRODUCTION

THE MATTER OF NORTHCOAST HEALTH CARE GROUP, INC. (F.K.A. INTERIM HEALTHCARE OF
NORTHEAST OHIO, INC.) CAME TO HEARING ON APRIL 5, 1999, BEFORE THE FOLLOWING
MEMBERS OF THE BOARD: ANN D. ABELE, R.Ph.; ROBERT B. CAVENDISH, R.Ph. (presiding); PAUL
F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT,
R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

NORTHCOAST HEALTH CARE GROUP, INC. (F.K.A. INTERIM HEALTHCARE OF NORTHEAST OHIO,
INC.) 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)  Joann Predina, R.Ph.; Ohio State Board of Pharmacy
Respondent's Witnesses:

(1) Valerie Perout, R.N.; NorthCoast Health Care Group, Inc.
(2) Lee Passell, President, NorthCoast Health Care Group, Inc.

(B) Exhibits

State's Exhibits:

(1) Exhibit 1--Copy of four-page Proposal to Deny/Notice of Opportunity for Hearing letter in the matter of NorthCoast Health Care Group, Inc. dated March 5, 1999.
(2) Exhibit 1A--Hearing Request letter from NorthCoast Health Care Group, Inc. dated March 5, 1999.
(3) Exhibit 1B--Copy of Hearing Schedule letter in the matter of NorthCoast Health Care Group, Inc. dated March 10, 1999.
(7) Exhibit 3--Copy of vial and label of Epinephrine 1mg/1ml found on site.
(9) Exhibit 5--Copies of thirty-five Group Immunization Influenza (Flu) Vaccine Patient Information Sheets and Completed Releases signed and dated October 5, 1998.
(12) Exhibit 8--Copy of nine-page Procedural Response to Error documented by Interim HealthCare of Northeast Ohio.

Respondent's Exhibits:

(1) Exhibit A--Copy of Policy for Management of Dangerous Drugs for NorthCoast Health Care Group, Inc. and it's (sic) Subsidiaries dated March 31, 1999.
(2) Exhibit B--Copy of Limited License Personnel List.
(3) Exhibit C--Copy of Daily Refrigerator Checklist Form for NorthCoast Health Care Group, Inc. and it's (sic) Subsidiaries.
(4) Exhibit D--Copy of Tracking of Order and Receipt of Dangerous Drugs Form for NorthCoast Health Care Group, Inc. and it's (sic) Subsidiaries.
(5) Exhibit E--Copy of Tracking of Return to Wholesaler of Origin of Dangerous Drugs Form for NorthCoast Health Care Group, Inc. and it’s (sic) Subsidiaries.
(6) Exhibit F--Copy of Possession of Dangerous Drugs Log Form for NorthCoast Health Care Group, Inc. and it’s (sic) Subsidiaries.
(7) Exhibit G--Copy of Disposition of Dangerous Drugs Log Form for NorthCoast Health Care Group, Inc. and it’s (sic) Subsidiaries.
(9) Exhibit I--Copy of Consideration for Administration/Management of Dangerous Drugs in Community Clinics for NorthCoast Health Care Group, Inc. and it’s (sic) Subsidiaries dated March 31, 1999.
(10) Exhibit J--Copy of Community Clinics-Offsite Tracking of Dangerous Drugs Form for NorthCoast Health Care Group, Inc. and it’s (sic) Subsidiaries.
(11) Exhibit K--Copies of Invoices for Medication Refrigerator Locks installed at NorthCoast Health Care, Inc., Shaker Heights, Ohio; Sandusky, Ohio; and Elyria, Ohio locations.
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 Ohio State Board of Pharmacy indicate that Lee A. Passell is the applicant signing on behalf of NorthCoast Health Care Group, Inc., formerly known as Interim HealthCare, Elyria; Interim HealthCare, Sandusky; and Interim HealthCare, Shaker Heights (hereafter, collectively referred to as “Interim”), pursuant to Section 4729.55 of the Ohio Revised Code.

(2) During a period prior to and including October 1998, Interim possessed for retail sale dangerous drugs when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Interim, prior to being licensed as a terminal distributor, was in possession of vaccines, which are dangerous drugs. Such conduct is in violation of Section 4729.51 of the Ohio Revised Code.

(3) On or about October 19, 1998, Interim failed to satisfy the qualifications of a terminal distributor as set forth in Section 4729.55 of the Ohio Revised Code, to wit: Interim was not equipped as to land, buildings, and equipment to properly carry on the business of a terminal distributor within the category of licensure approved by the Board. During an on-site inspection, Interim failed to provide effective and approved controls and procedures to guard against theft and diversion of dangerous drugs. A Compliance Specialist from the Ohio State Board of Pharmacy observed the below listed dangerous drugs unsecured, in an unlocked refrigerator located in a "kitchen type" area:

<table>
<thead>
<tr>
<th>Drug Name</th>
<th>Quantity</th>
<th>Dosage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pneumovax 23 (outdated)</td>
<td>2</td>
<td>2.5 multi-dose vials</td>
</tr>
<tr>
<td>Pnu Immune and Pneumovax 23</td>
<td>19</td>
<td>2.5 multi-dose vials</td>
</tr>
<tr>
<td>Pneumovax 23</td>
<td>29</td>
<td>0.5ml single-dose vials</td>
</tr>
<tr>
<td>Flu Vaccine</td>
<td>18</td>
<td>5.0ml vials</td>
</tr>
<tr>
<td>Flu Vaccine</td>
<td>2</td>
<td>partial 5.0ml vials</td>
</tr>
<tr>
<td>Epinephrine 1:1000</td>
<td>3</td>
<td>ampoules</td>
</tr>
</tbody>
</table>

Such conduct is in violation of Rules 4729-9-05 and 4729-9-11 of the Ohio Administrative Code.

(4) During a period prior to and including October 5, 1998, Interim failed to provide adequate safeguards to assure that dangerous drugs were being distributed in accordance with all state and federal laws as required in Section 4729.55(C) of the Ohio Revised Code, to wit: on October 5, 1998, a receptionist at Interim’s Shaker Heights office prepared an order for mass inoculation of flu vaccines from an unsecured supply of dangerous drugs, and the order was mistakenly filled with vials of Tubersol. The order was not checked on site by the nursing staff of Interim, or by the administering nurse, also an employee of Interim. Thirty-six (36) patients were injected with Tubersol as a result of this improper distribution. Such conduct is in violation of Rules 4729-9-05 and 4729-9-11 of the Ohio Administrative Code.

(5) On or about October 16, 1998, Interim failed to provide supervision and control of dangerous drugs as required in Division (B) of Section 4729.55 of the Ohio Revised Code, and adequate safeguards to assure that dangerous drugs were being distributed in accordance with all state and federal laws as required in Section 4729.55 of the Ohio Revised Code, to wit: an Ohio State Board of Pharmacy Compliance Specialist observed four syringes of clear liquid drawn and laying on a table located near the pharmacy at Walgreens, Lake Shore Boulevard, Cleveland, Ohio. The nurse on duty, employed by Interim, was shopping at the time of the inspection. Further, Walgreen employees had observed the nurse sleeping between patients. Such conduct is in violation of Rules 4729-9-05 and 4729-9-11 of the Ohio Administrative 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 violating Section 4729.51 of the Revised Code as provided in Division (D) 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 (3) through (5) of the Findings of Fact constitute violating a rule of the Board as provided in Division (D) 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 (3) of the Findings of Fact constitutes failing to be 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 Division (A) of Section 4729.55 of the Ohio Revised Code.

(4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (4) and (5) of the Findings of Fact constitute failing to assure adequate safeguards to prevent the sale or other distribution of dangerous drugs by any person other than a pharmacist or licensed health professional authorized to prescribe drugs as provided in Division (C) of Section 4729.55 of the Ohio Revised Code.

(5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitutes failing to maintain supervision and control over the possession and custody of such dangerous drugs that may be acquired by or on behalf of the applicant as provided in Division (B) of Section 4729.55 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.55 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of NorthCoast Health Care Group, Inc.:

(A) The Ohio State Board of Pharmacy hereby approves the issuance of a Terminal Distributor of Dangerous Drugs license to NorthCoast Health Care Group, Inc.

(B) A Compliance and Enforcement Specialist employed by the Ohio State Board of Pharmacy will, within the next twelve (12) months, make an unannounced inspection of NorthCoast Health Care Group, Inc.

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

MOTION CARRIED.

SO ORDERED.

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

Mrs. Neuber then moved that the Board adopt the following Order in the matter of Joseph Martin Rukse:

RES. 99-165

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-981230-026)

In the Matter Of:

JOSEPH MARTIN RUKSE, JR., R.Ph.
208 Bevis Circle
Huntington, West Virginia 25705
(R.Ph. No. 03-2-15318)
INTRODUCTION


JOSEPH MARTIN RUKSE, JR. WAS REPRESENTED BY ROBERT D. NOBLE, 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) Joseph Martin Rukse, Jr., R.Ph., Respondent
(2) Darlene Rukse, Wfe of Respondent
(3) Larry Edge, R.Ph.

(B) Exhibits

State's Exhibits:

(2) Exhibit 1A--Hearing Request letter dated January 12, 1999.
(3) Exhibit 1B--Copy of Hearing Schedule letter dated January 21, 1999.
(4) Exhibit 1C--Copy of Pharmacist File Front Sheet of Joseph Martin Rukse, Jr. showing original date of registration as September 27, 1983, and two-page copy of Renewal Application for Pharmacist License, No. 03-2-15318, for a license to practice pharmacy in Ohio from September 15, 1998, to September 15, 1999, of Joseph Martin Rukse, Jr. dated September 15, 1998.
(5) Exhibit 1D--Copy of Hearing Schedule letter dated March 10, 1999.
(8) Exhibit 3--Certified copy of the following: Judgement Entry Plea and Sentencing in the Lawrence County Municipal Court, State of Ohio vs. Joseph Rukse, Case No. 97CRA 393, dated June 2, 1997; Complaint by Prosecuting Attorney Upon Affidavit in the Lawrence County Municipal Court, State of Ohio vs. Joseph Rukse, Case No. 97CRA 393, dated April 32 (sic May 2), 1997; and Criminal Affidavit of Joseph M. Butcher signed and notarized on April 29, 1997.
(9) Exhibit 4--Copy of Rule 5 - Standard Rules of Probation in the Lawrence County Municipal Court.
(10) Exhibit 5--Copy of front side of Renewal Application for Pharmacist License, No. 03-2-15318, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Joseph M. Rukse dated July 15, 1997.
(11) Exhibit 5A--Copy of Complaint in the Franklin County Municipal Court in the matter of Joseph M. Rukse, Jr., Case No. 13821, dated May 28, 1998.

Respondent's Exhibits:

(2) Exhibit B--Copy of letter from David L. Hatfield dated March 1, 1999.
(4) Exhibit D--Copy of letter from Jerry Frame dated February 23, 1999.
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 Joseph Martin Rukse, Jr. was originally licensed in the state of Ohio on September 27, 1983, pursuant to reciprocity, and is currently licensed to practice pharmacy in the State of Ohio.

(2) Joseph Martin Rukse, Jr. did, from January 20, 1997, through February 26, 1997, with purpose to deprive, knowingly obtain or exert control over property of Kmart Pharmacy #4422 in Chesapeake, Ohio, without consent, to wit: Joseph Martin Rukse, Jr. stole approximately $879.22 in cash and merchandise from his employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(3) Joseph Martin Rukse, Jr. was, on or about June 2, 1997, convicted of theft, in violation of Section 2913.02 of the Ohio Revised Code, a misdemeanor of the first degree. State of Ohio vs. Joseph Rukse, Case No. 97CRA 393, Lawrence County Municipal Court.

(4) Joseph Martin Rukse, Jr. did, on or about July 15, 1997, knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when the statement was made with purpose to secure the issuance by a governmental agency of a license, permit, authorization, certificate, or registration, to wit: in order to obtain his pharmacy renewal license without repercussions, Joseph Martin Rukse, Jr. lied on his pharmacy renewal application, indicating that he had not been convicted of a felony or misdemeanor within the preceding eighteen months when in fact he had. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

(5) On November 24, 1998, Joseph Martin Rukse, Jr. entered a "no contest" plea to the charge of Attempted Falsification, a violation of Section 2923.02 of the Ohio Revised Code, being a misdemeanor of the second degree. State of Ohio vs. Joseph M. Rukse, Case No. 98/013821, Franklin County Municipal Court.

CONCLUSIONS OF LAW

(1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (5) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

(2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3) and (5) of the Findings of Fact constitute having been convicted of a misdemeanor related to, or committed in, the practice of pharmacy as provided in Division (A)(4) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Joseph Martin Rukse, Jr.:

(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. 03-2-15318, held by Joseph Martin Rukse, Jr. for 42 months, 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, Joseph Martin Rukse, Jr. may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs while his license is under active suspension.
(B) Further, the Board will stay 36 months of the suspension and place the pharmacist identification card on probation during the 36-month stay. The terms of probation are as follows:

(1) The State Board of pharmacy hereby declares that Joseph Martin Rukse Jr.’s pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.

(2) Joseph Martin Rukse Jr. may not serve as a responsible pharmacist.

(3) Joseph Martin Rukse Jr. must not violate the drug laws of the state of Ohio, any other state, or the federal government.

(4) Joseph Martin Rukse Jr. must abide by the rules of the Ohio State Board of Pharmacy.

(5) Joseph Martin Rukse Jr. must comply with the terms of this Order.

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

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 license to the offices of the state board of pharmacy within ten days after receipt of notice of such action.” The wall 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-6/Nay-1).

4:10 p.m.

The meeting was recessed until Tuesday, April 6, 1999.

TUESDAY, APRIL 6, 1999

9:00 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:


9:02 a.m.

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

9:08 a.m.

RES. 99-166 Mr. Littlejohn arrived. The Executive Session ended and the meeting was opened to the public. Mr. Lamping moved that the Board deny the settlement offer received in the matter
of Michael Joseph Frost. The motion was seconded by Ms. Abele and approved by the Board (Aye-6/Nay-0/Abstain-1[Littlejohn]).

9:10 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 James Brian Bird, Bolivar, Ohio.

11:55 p.m.

The hearing concluded and the record was closed. The Board took a recess for lunch.

1:00 p.m.

RES. 99-167

All of the Board members, with the exception of Mrs. Adelman and President Maslak, reconvened in Room 1919 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, Mr. Littlejohn moved that the Board approve the following candidates for licensure. The motion was seconded by Mr. Lamping and approved by the Board (Aye-7/Nay-0).

<table>
<thead>
<tr>
<th>Name</th>
<th>License Number</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIUFO, NICOLE</td>
<td>03-2-23485</td>
<td>KENTUCKY</td>
</tr>
<tr>
<td>COURTNEY, RAY D.</td>
<td>03-2-23502</td>
<td>NORTH CAROLINA</td>
</tr>
<tr>
<td>CRAIG, JOAN MARIE</td>
<td>03-2-23426</td>
<td>CONNECTICUT</td>
</tr>
<tr>
<td>HOLDER, MICHAEL KEVIN</td>
<td>03-2-23471</td>
<td>TENNESSEE</td>
</tr>
<tr>
<td>LECHMAN-HOLDER, MICHELLE SUZANE</td>
<td>03-2-23472</td>
<td>TENNESSEE</td>
</tr>
<tr>
<td>MIGLIN, SCOTT THOMAS</td>
<td>03-2-23470</td>
<td>MISSOURI</td>
</tr>
<tr>
<td>MISHRA, NITU</td>
<td>03-2-23465</td>
<td>KENTUCKY</td>
</tr>
<tr>
<td>MYERS, SCOTT LOUIS</td>
<td>03-2-23483</td>
<td>COLORADO</td>
</tr>
<tr>
<td>NOTTE, JOSEPH A.</td>
<td>03-2-23477</td>
<td>PENNSYLVANIA</td>
</tr>
<tr>
<td>RECKER, BARBARA ANN</td>
<td>03-2-23457</td>
<td>INDIANA</td>
</tr>
<tr>
<td>RIVENBARK, GROVER H.</td>
<td>03-2-23460</td>
<td>ARKANSAS</td>
</tr>
<tr>
<td>SCHMITT, JEFFREY GEORGE</td>
<td>03-2-23433</td>
<td>PENNSYLVANIA</td>
</tr>
<tr>
<td>WANEK, PHILIP MORGAN</td>
<td>03-2-23459</td>
<td>MONTANA</td>
</tr>
</tbody>
</table>

1:24 p.m.

The Board reconvened in Room 1914 to continue with the business of the Board. Mr. Lamping moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against licensees and registrants pursuant to Section 121.22(G)(1) of the Revised Code.. Ms. Abele seconded the motion. Vice-President Cavendish then conducted the following roll call vote: Abele-Yes, Cavendish-Yes, Lamping-Yes, Littlejohn-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

1:30 p.m.

RES. 99-168

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 James Brian Bird:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-981020-022)

In The Matter Of:

JAMES BRIAN BIRD
1681 Maple Square, NE
Bolivar, Ohio 44612
(D.O.B. 1/4/57)

INTRODUCTION


JAMES BRIAN BIRD WAS REPRESENTED BY WAYNE KEREK, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.
SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

(1) David Gallagher, Ohio State Board of Pharmacy

Respondent's Witnesses:

(1) James Brian Bird, Respondent
(2) Kent Douglas Potts, R.Ph., Pharmacists Rehabilitation Organization, Inc.
(3) Mimi Bird, Wife of Respondent

(B) Exhibits

State's Exhibits:

(2) Exhibit 1A--Two-page Hearing Request letter dated November 16, 1998.
(3) Exhibit 1B--Copy of Hearing Schedule letter dated November 20, 1998.
(5) Exhibit 1D--Application for Examination as a Pharmacist of James Brian Bird signed and notarized on September 23, 1998.
(13) Exhibit 7--Copy of two-page handwritten statement of Jean L. Lahmers signed and notarized on March 2, 1993.

Respondent's Exhibits:

(2) Exhibit B--Copy of letter from Bruce Hensley dated February 2, 1999.
(3) Exhibit C--Copy of two-page letter from Bruce Hensley dated June 24, 1997.
(4) Exhibit D--Copy of Affidavit of Patricia A. Schott signed and notarized on February 2, 1999.
(19) Exhibit F1--Copy of meeting attendance verification dated from August 18, 1997, through August 24, 1997.
(21) Exhibit F3--Copy of meeting attendance verification dated from September 1, 1997, through September 7, 1997.
(22) Exhibit F4--Copy of meeting attendance verification dated from September 8, 1997, through September 14, 1997.
(23) Exhibit F5--Copy of meeting attendance verification dated from September 15, 1997, through September 21, 1997.
(26) Exhibit F8--Copy of meeting attendance verification dated from October 6, 1997, through October 12, 1997.
(28) Exhibit F10--Copy of meeting attendance verification dated from October 20, 1997, through October 26, 1997.
(29) Exhibit F11--Copy of meeting attendance verification dated from October 27, 1997, through November 2, 1997.
(30) Exhibit F12--Copy of meeting attendance verification dated from November 3, 1997, through November 9, 1997.
(33) Exhibit F15--Copy of meeting attendance verification dated from November 24, 1997, through November 30, 1997.
(34) Exhibit F16--Copy of meeting attendance verification dated from December 1, 1997, through December 7, 1997.
(35) Exhibit F17--Copy of meeting attendance verification dated from December 8, 1997, through December 14, 1997.
(42) Exhibit F24--Copy of meeting attendance verification dated from January 26, 1998, through February 1, 1998.
(49) Exhibit F31--Copy of meeting attendance verification dated from March 16, 1998, through March 22, 1998.
(52) Exhibit F34--Copy of meeting attendance verification dated from April 6, 1998, through April 12, 1998.
(54) Exhibit F36--Copy of meeting attendance verification dated from April 20, 1998, through April 26, 1998.
(60) Exhibit F42--Copy of meeting attendance verification dated from June 1, 1998, through June 7, 1998.
(61) Exhibit F43--Copy of meeting attendance verification dated from June 8, 1998, through June 14, 1998.
(64) Exhibit F46--Copy of meeting attendance verification dated from June 29, 1998, through July 5, 1998.
(65) Exhibit F47--Copy of meeting attendance verification dated from July 6, 1998, through July 12, 1998.
(69) Exhibit F51--Copy of meeting attendance verification dated from August 3, 1998, through August 9, 1998.
(70) Exhibit F52--Copy of meeting attendance verification dated from August 10, 1998, through August 16, 1998.
(72) Exhibit F54--Copy of meeting attendance verification dated from August 24, 1998, through August 30, 1998.
(73) Exhibit F55--Copy of meeting attendance verification dated from August 31, 1998, through September 6, 1998.
(74) Exhibit F56--Copy of meeting attendance verification dated from September 7, 1998, through September 13, 1998.
(75) Exhibit F57--Copy of meeting attendance verification dated from September 14, 1998, through September 20, 1998.
(76) Exhibit F58--Copy of meeting attendance verification dated from September 21, 1998, through September 27, 1998.
(78) Exhibit F60--Copy of meeting attendance verification dated from October 5, 1998, through October 11, 1998.
(81) Exhibit F63--Copy of meeting attendance verification dated from October 26, 1998, through November 1, 1998.
(82) Exhibit F64--Copy of meeting attendance verification dated from November 2, 1998, through November 8, 1998.
(83) Exhibit F65--Copy of meeting attendance verification dated from November 9, 1998, through November 15, 1998.
(84) Exhibit F66--Copy of meeting attendance verification dated from November 16, 1998, through November 22, 1998.
(86) Exhibit F68--Copy of meeting attendance verification dated from November 30, 1998, through December 6, 1998.
(87) Exhibit F69--Copy of meeting attendance verification dated from December 7, 1998, through December 13, 1998.
(88) Exhibit F70--Copy of meeting attendance verification dated from December 14, 1998, through December 20, 1998.
(89) Exhibit F71--Copy of meeting attendance verification dated from December 21, 1998, through December 27, 1998.
(91) Exhibit F73--Copy of meeting attendance verification dated from January 4, 1999, through January 10, 1999.
(92) Exhibit F74--Copy of meeting attendance verification dated from January 11, 1999, through January 17, 1999.
(93) Exhibit F75--Copy of meeting attendance verification dated from January 18, 1999, through January 24, 1999.
(94) Exhibit F76--Copy of meeting attendance verification dated from January 25, 1999, through January 31, 1999.
(95) Exhibit F77--Copy of meeting attendance verification dated from February 1, 1999, through February 7, 1999.
(96) Exhibit F78--Copy of meeting attendance verification dated from February 8, 1999, through February 14, 1999.
(97) Exhibit F79--Copy of meeting attendance verification dated from February 15, 1999, through February 21, 1999.
(99) Exhibit F81--Copy of meeting attendance verification dated from March 1, 1999, through March 7, 1999.
(100) Exhibit F82--Copy of meeting attendance verification dated from March 8, 1999, through March 14, 1999.
(101) Exhibit F83--Copy of meeting attendance verification dated from March 15, 1999, through March 21, 1999.
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 James Brian Bird submitted an Application for Examination as a Pharmacist on or about September 24, 1998.

(2) Records further indicate that on or about March 14, 1994, the Board found the following to be fact:

   a) Records of the State Board of Pharmacy indicate that James Brian Bird was originally licensed to practice pharmacy in the state of Ohio by reciprocity on December 2, 1980, and was summarily suspended on April 29, 1993. Further, James Brian Bird admitted in his testimony that he was the responsible pharmacist during all relevant time periods as stated in the paragraphs below.

   b) James Brian Bird did, on or about December 22, 1992, and dates prior thereto, practice pharmacy at the Medicine Shoppe, 555 W. High Street, New Philadelphia, Ohio, when addicted to drugs. James Brian Bird admitted that he abused Percodan, Percocet, Tylox, and their generic equivalents. Thus, James Brian Bird is addicted to or abusing liquor and/or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.

   c) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 115 units of Dexedrine 5mg, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
(d) James Brian Bird, as the responsible pharmacist did, between August 10, 1991, and December 2, 1992, knowingly sell, under the definition of Sections 3719.01(EE) and 4729.02(j) of the Revised Code, a controlled substance in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird and/or a pharmacist under his control sold 172 units of Xanax 0.25mg, a schedule IV controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.

(e) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold, for his own purposes, 65 units of Percodan and/or generic equivalents, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.

(f) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 755 units of Tylox and/or generic equivalents, and 156 units of Dilaudid 4mg, schedule II controlled substances, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

(g) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 300 units of APAP 325mg/Codeine 30mg, and 990ml of Hycodan Syrup, schedule III controlled substances, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

(h) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 3,600 units of Diazepam 5mg, a schedule IV controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

(i) James Brian Bird did, between August 10, 1991, and December 2, 1992, sell controlled substances in an amount equal to or exceeding one hundred times the bulk amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold 5,645 units of Percocet and/or generic equivalents, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(10) of the Ohio Revised Code.

(j) James Brian Bird did, between April 30, 1990, and April 30, 1993, sell controlled substances in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird sold the following schedule...
IV controlled substances without prescriptions and/or without a legitimate medical purpose:

<table>
<thead>
<tr>
<th>Drug</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adipex-P 3.75mg</td>
<td>292</td>
</tr>
<tr>
<td>Phentermine 37.5mg</td>
<td>1150</td>
</tr>
<tr>
<td>Phentermine 30mg</td>
<td>357</td>
</tr>
</tbody>
</table>

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

(k) James Brian Bird did, between April 30, 1990, and April 30, 1993, sell, under the definition of Sections 3719.01(EE) and 4729.02(j) of the Revised Code, a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Ohio Revised Code, to wit: James Brian Bird or a pharmacist under his control sold 42 units of Ionimin 30mg, a schedule IV controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.

(l) James Brian Bird did, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: James Brian Bird created false or forged prescriptions in the name of patient Linda Hanner, not authorized by a practitioner for the following dangerous drugs:

<table>
<thead>
<tr>
<th>Rx No.</th>
<th>Type</th>
<th>Date</th>
<th>Drug</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>694394</td>
<td>original</td>
<td>03/05/92</td>
<td>Ceclor 250mg</td>
<td>21</td>
</tr>
<tr>
<td>701111</td>
<td>original</td>
<td>06/23/92</td>
<td>Seldane 60mg</td>
<td>20</td>
</tr>
<tr>
<td>701111</td>
<td>refill</td>
<td>07/11/92</td>
<td>Seldane 60mg</td>
<td>20</td>
</tr>
<tr>
<td>701111</td>
<td>refill</td>
<td>07/27/92</td>
<td>Seldane 60mg</td>
<td>20</td>
</tr>
<tr>
<td>701111</td>
<td>refill</td>
<td>08/25/92</td>
<td>Seldane 60mg</td>
<td>15</td>
</tr>
<tr>
<td>701111</td>
<td>refill</td>
<td>08/31/92</td>
<td>Seldane 60mg</td>
<td>15</td>
</tr>
<tr>
<td>701111</td>
<td>refill</td>
<td>09/11/92</td>
<td>Seldane 60mg</td>
<td>15</td>
</tr>
<tr>
<td>701111</td>
<td>refill</td>
<td>10/05/92</td>
<td>Seldane 60mg</td>
<td>15</td>
</tr>
<tr>
<td>701111</td>
<td>refill</td>
<td>11/19/92</td>
<td>Seldane 60mg</td>
<td>10</td>
</tr>
<tr>
<td>707033</td>
<td>original</td>
<td>10/05/92</td>
<td>Seldane-D</td>
<td>15</td>
</tr>
<tr>
<td>707033</td>
<td>refill</td>
<td>10/09/92</td>
<td>Seldane-D</td>
<td>15</td>
</tr>
</tbody>
</table>

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

(m) James Brian Bird did, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: James Brian Bird created false or forged telephone prescriptions in the name of patient Willard Hanner, not authorized by a practitioner for the following dangerous drugs:

<table>
<thead>
<tr>
<th>Rx No.</th>
<th>Type</th>
<th>Date</th>
<th>Drug</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>667874</td>
<td>original</td>
<td>01/21/91</td>
<td>Colfed A</td>
<td>12</td>
</tr>
<tr>
<td>671672</td>
<td>original</td>
<td>03/08/91</td>
<td>Doxycycline 100mg</td>
<td>11</td>
</tr>
<tr>
<td>671672</td>
<td>refill</td>
<td>06/27/91</td>
<td>Doxycycline 100mg</td>
<td>11</td>
</tr>
<tr>
<td>680953</td>
<td>original</td>
<td>08/08/91</td>
<td>Cipro 500mg</td>
<td>14</td>
</tr>
<tr>
<td>680953</td>
<td>refill</td>
<td>08/15/91</td>
<td>Cipro 500mg</td>
<td>14</td>
</tr>
<tr>
<td>680953</td>
<td>refill</td>
<td>11/07/91</td>
<td>Cipro 500mg</td>
<td>14</td>
</tr>
<tr>
<td>681938</td>
<td>original</td>
<td>08/29/91</td>
<td>Tetracycline-250</td>
<td>40</td>
</tr>
<tr>
<td>681938</td>
<td>refill</td>
<td>04/08/92</td>
<td>Tetracycline-250</td>
<td>56</td>
</tr>
<tr>
<td>695035</td>
<td>original</td>
<td>03/16/92</td>
<td>Erythromycin-250</td>
<td>40</td>
</tr>
<tr>
<td>695035</td>
<td>refill</td>
<td>03/26/92</td>
<td>Erythromycin-250</td>
<td>40</td>
</tr>
<tr>
<td>695035</td>
<td>refill</td>
<td>04/02/92</td>
<td>Erythromycin-250</td>
<td>40</td>
</tr>
<tr>
<td>701284</td>
<td>original</td>
<td>06/26/92</td>
<td>Cephalexin 250mg</td>
<td>28</td>
</tr>
<tr>
<td>701284</td>
<td>refill</td>
<td>10/15/92</td>
<td>Cephalexin 250mg</td>
<td>28</td>
</tr>
<tr>
<td>706417</td>
<td>original</td>
<td>09/25/92</td>
<td>Cipro 500mg</td>
<td>14</td>
</tr>
</tbody>
</table>
Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.

(n) James Brian Bird did, from on or about April, 1990, through February, 1993, furnish to another controlled substances when the conduct was not in accordance with Chapters 3719., 4715., 4729., 4731., and/or 4741. of the Ohio Revised Code, to wit: due to illegal sales of Diazepam 5mg, a schedule IV controlled substance, to Jean Lahmers, James Brian Bird caused her to become drug dependent. Such conduct is in violation of Section 2925.02(B) of the Ohio Revised Code.

(o) James Brian Bird, as the responsible pharmacist did, between August 10, 1991, and December 2, 1992, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, a controlled substance in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird or a pharmacist under his control sold 480ml of Methadone oral solution 5mg/5ml, a schedule II controlled substance, without prescriptions and/or without a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.

(p) James Brian Bird, as the responsible pharmacist did, between August 10, 1991, and December 2, 1992, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, controlled substances in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird or a pharmacist under his control sold the following schedule II controlled substances without prescriptions and/or without a legitimate medical purpose:

<table>
<thead>
<tr>
<th>Drug</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Methylphenidate 5mg</td>
<td>1,009</td>
</tr>
<tr>
<td>Methylphenidate Extended Release 20mg</td>
<td>201</td>
</tr>
</tbody>
</table>

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

(q) James Brian Bird, as the responsible pharmacist did, between April 30, 1990, and April 30, 1993, sell, under the definition of Sections 3719.01(EE) and 4729.02(J) of the Revised Code, a controlled substance in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount when the conduct was not in accordance with Chapters 3719. and 4729. of the Revised Code, to wit: James Brian Bird or a pharmacist under his control sold the following controlled substances without prescriptions and/or without a legitimate medical purpose:

<table>
<thead>
<tr>
<th>Drug</th>
<th>Schedule</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Methylphenidate 10mg</td>
<td>II</td>
<td>1,118</td>
</tr>
<tr>
<td>Xanax 0.5mg</td>
<td>IV</td>
<td>1,208</td>
</tr>
<tr>
<td>Xanax 1mg</td>
<td>IV</td>
<td>940</td>
</tr>
</tbody>
</table>

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

(r) James Brian Bird did, on or about December 21, 1993, plead guilty in the Court of Common Pleas of Tuscarawas County, Ohio, to fifteen counts of Trafficking in Drugs, in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
The Board concluded that James Brian Bird was guilty of a felony and gross immorality; guilty of dishonesty and unprofessional conduct in the practice of pharmacy; addicted to and abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy; and guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Sections 3715.52 to 3715.72 or Chapters 2925., 3719., or 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code. Therefore, James Brian Bird's license to practice pharmacy in the state of Ohio, No. 03-2-13744, was revoked.

(3) Records of the Board further indicate that James Brian Bird submitted an Application for Examination as a Pharmacist on or about November 27, 1996, and on September 11, 1997, for the reasons stated in paragraph (2) above, his application was denied.

CONCLUSIONS OF LAW

(1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2)(r) of the Findings of Fact constitutes being guilty of a felony and gross immorality as provided in paragraph (B) of Rule 4729-5-04 of the Ohio Administrative Code.

(2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2)(r) of the Findings of Fact constitutes having been convicted of violating a state or federal pharmacy or drug law as provided in paragraph (B) of Rule 4729-5-04 of the Ohio Administrative Code.

(3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2)(a) through (2)(r) of the Findings of Fact constitute not being of good moral character and habits as provided in paragraph (C) of Rule 4729-5-04 of the Ohio Administrative Code.

(4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2)(b) and (2)(e) of the Findings of Fact constitute being addicted to or abusing liquor or drugs as provided in paragraph (D) of Rule 4729-5-04 of the Ohio Administrative Code.

(5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) of the Findings of Fact constitutes having been disciplined by the Ohio State Board of Pharmacy pursuant to Section 4729.16 of the Revised Code as provided in paragraph (E) of Rule 4729-5-04 of the Ohio Administrative Code.

ACTION OF THE BOARD

Pursuant to Section 4729.08 of the Ohio Revised Code and Rule 4729-5-04 of the Ohio Administrative Code, and on the basis of the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby denies the issuance of a certificate of registration or an identification card to practice pharmacy, and therefore, denies the Application for Examination as a Pharmacist submitted by James Brian Bird. Further, James Brian Bird may not submit an Application for Examination as a Pharmacist prior to January 1, 2025.

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

MOTION CARRIED.

SO ORDERED.

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

1:35 p.m.

Mrs. Plant left the meeting to attend to personal business.

1:37 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 Matthew Earl Fisher, Columbus, Ohio.
1:45 p.m. The Board took a recess from the hearing to review the documentation submitted by Mr. Fisher.

2:00 p.m. The hearing resumed.

2:46 p.m. The hearing concluded and the record was closed. The Board took a brief recess.

2:57 p.m. The meeting resumed. Mr. Lamping moved that the Board go into Executive Session for the purpose of the investigation of charges or complaints against licensees and registrants pursuant to Section 121.22(G)(1) of the Revised Code and to consult with an attorney for the Board pursuant to Section 121.22(G)(3) of the Revised Code. Mr. Repke seconded the motion. Vice-President Cavendish then conducted the following roll call vote: Abele-Yes, Cavendish-Yes, Lamping-Yes, Littlejohn-Yes, Neuber-Yes, and Repke-Yes.

3:30 p.m. 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 Matthew Earl Fisher:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-980820-008)

In The Matter Of:

MATTHEW EARL FISHER, R.Ph.
100 Winding Way, Apt. B
Kenton Hills, Kentucky 41011
(R.Ph. No. 03-2-12681)

INTRODUCTION


MATTHEW EARL FISHER WAS REPRESENTED BY DOUGLAS E. GRAFF, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

None

Respondent's Witnesses:

(1) Matthew E. Fisher, R.Ph., Respondent
(2) Jerome Bayer, Parenthesis Family Advocates
(3) Wayne C. Miller, R.Ph.

(B) Exhibits

State's Exhibits:

(1) Exhibit 1--Copy of five-page Settlement Agreement with the State Board of Pharmacy, in the matter of Matthew Earl Fisher, Docket No. D-971210-025, effective April 6, 1998.
(3) Exhibit 1B--Copy of Hearing Schedule letter dated August 20, 1998.
Respondent's Exhibits:

(1) Exhibit A--Copy of three Weekly Record of Meeting Attendance sheets dated from March 27, 1999, through April 3, 1999.


**FINDING OF FACT**

After having heard the testimony, considered the evidence, observed the demeanor of the witnesses, and weighed their credibility, the State Board of Pharmacy finds the following to be fact:
Matthew Earl Fisher has not complied with the terms set forth in the Settlement Agreement with the Ohio State Board of Pharmacy, Docket No. D-971210-025, effective April 6, 1998.

**ACTION OF THE BOARD**

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy denies the reinstatement petition of Matthew Earl Fisher. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Matthew Earl Fisher may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs while his license is suspended.

(A) December 1, 1999, or thereafter, the Board will consider any petition filed by Matthew Earl Fisher for a hearing, pursuant to Revised Code Chapter 119., upon the question of the reinstatement of his license to practice pharmacy in Ohio.

(B) The Board will consider the reinstatement of the license only if the following conditions have been met:

1. Matthew Earl Fisher must maintain his current contract with the Pharmacists Rehabilitation Organization, Inc.
   
   a) **Random, observed** urine drug screens shall be conducted at least every month. The urine sample must be given within eight hours of notification. The urine drug screen must report testing for alcohol, hydrocodone, and other drugs of abuse; and, the testing must be performed within 48 hours from the time the sample is given. The urine drug screen must also report testing for creatinine or specific gravity of the sample as the dilutional standard;
   
   b) Regular attendance, at least three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meetings, and at meetings of a professional support group, is required during outpatient treatment and/or during aftercare; and
   
   c) The program shall immediately report to the Board of Pharmacy any positive urine screens and/or other violations of the contract.

2. Matthew Earl Fisher, upon petitioning the Board for reinstatement, must provide written documentation from the treatment provider(s) regarding compliance with the program(s), and copies of all urine screen reports.

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

**MOTION CARRIED.**

**SO ORDERED.**

The motion was seconded by Mr. Littlejohn and approved by the Board (Aye-5/Nay-1).

**RES. 99-170** Ms. Abele moved that the continuing education program submitted by University Consultants be returned to them for revision and resubmission before the Board would consider approving the course to be used as Board-approved jurisprudence. The motion was seconded by Mr. Littlejohn and approved by the Board (Aye-6/Nay-0).

**RES. 99-171** Mr. Winsley and Mr. Benedict then discussed a letter submitted by Allscripts describing the procedures to be used when faxing prescriptions from a computer system in a doctor’s office to pharmacies in the area. The system involved using a special design in the background that would be difficult to duplicate. The Board felt that the procedure would be able to be approved, but that Ohio Administrative Code Rule 4729-5-30 would need to be
revised to remove the requirement for the manual signature of the physician on the fax prescription in unique circumstances such as this.

Mr. Lamping and Mr. Repke discussed the Utah program on drug abuse that is offered each year. This year’s program will be held June 20-25, 1999. Mr. Repke offered to provide information on the program to any interested Board member.

4:07 p.m.

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

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

4:08 p.m.

Mr. Cavendish moved that the meeting be adjourned. The motion was seconded by Mr. Repke and approved (Aye-6/Nay-0).

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

/d/ May 4, 1999

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