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Minutes Of The Meeting
Ohio State Board of Pharmacy
Columbus, Ohio
May 3, 4, 5, 1999

MONDAY, MAY 3, 1999

8:11 a.m. ROLL CALL

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

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

Mr. Winsley informed the Board that Board member Paul Lamping would not be joining the meeting due to health problems.

RES. 99-172 President Maslak then announced to the Board that he had accepted employment with a company located in another state and had therefore submitted his resignation from the Board to the Governor's office. His resignation will be effective June 30, 1999.

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. Cavendish seconded the motion. President Maslak then conducted the following roll call vote: Abele-Yes, Adelman-Yes, Cavendish-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

10:20 a.m.

RES. 99-173 The Executive Session ended and the meeting was opened to the public. Mrs. Neuber moved that the Board refuse the settlement offered in the case of Linden Medical Pharmacy, Columbus and hold the hearing as scheduled. The motion was seconded by Mr. Repke and approved by the Board (Aye-5/Nay-0/Abstain-1[Plant]).

RES. 99-174 Mr. Winsley reported that the following settlement agreement, which had been previously approved by the Board, was finalized and is now effective:

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into, as of the latest date set forth below, by and among, on the one hand, Fairview Park Pharmacy, Inc. ("FPP"), Stephen H. Dolin, R.Ph., as co-owner, an officer of FPP and in his individual capacity ("Dolin") and Lawrence M. Friedman, R.Ph., as co-owner, an officer of FPP and in his individual capacity ("Friedman"), and on the other hand, the Ohio State Board of Pharmacy ("Pharmacy Board"), a State Agency charged with enforcing, *inter alia*, the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729 of the Ohio Revised Code, and the Ohio Bureau of Workers' Compensation ("BWC"), a State Agency, charged with, *inter alia*, the

administration of the Ohio Workers' Compensation Program and enforcing the Ohio Workers' Compensation laws as set forth in Chapters 4121 and 4123 of the Ohio Revised Code.

WITNESSETH THAT:

WHEREAS, FPP, Friedman and Dolin enter into this Agreement being fully informed of its and their 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; and

WHEREAS, the Pharmacy Board (a) has licensed Dolin as a pharmacist (R.Ph. No. 03-1-11043), (b) has licensed Friedman as a pharmacist (R.Ph. No. 03-1-06240), and (c) has licensed FPP as a terminal distributor of drugs (Terminal Distributor No. 02-0420800); and

WHEREAS, the Pharmacy Board has been investigating FPP, Friedman and Dolin for allegedly illegal conduct in connection with the practice of pharmacy, including, but not limited to, the commencement of an investigation in 1993 docketed internally at the Pharmacy Board as Case No. 93-1461; and

WHEREAS, BWC has been investigating FPP, Friedman and Dolin for allegedly illegal conduct in connection with billing the BWC for drugs dispensed to BWC claimants, including, but not limited to, the commencement of an investigation in 1993 docketed internally at the BWC as Case No. 587-93; and

WHEREAS, the Pharmacy Board is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, refuse to renew, or impose a monetary penalty on any terminal distributor of dangerous drugs for violation of Section 4729.57; and

WHEREAS, the Pharmacy Board 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 Section 4729.16; and

WHEREAS, the BWC is empowered by Chapters 4121 and 4123 of the Ohio Revised Code, *inter alia*, to administer the payment for drugs dispensed to BWC claimants by health care providers, and pursuant to Section 4123-7-40 of the Ohio Administrative Code may sanction, suspend or exclude a health care provider from participation in the treatment of BWC claimants for violations of Chapter 4121 and 4123 of the Ohio Revised Code; and

WHEREAS, attached hereto and incorporated herein are (a) the Pharmacy Board's Notice of Opportunity for Hearing (Docket Nos. D-980211-042 (related to Dolin), D-980211-043 (related to Friedman) and D-980211-044 (related to FPP)) dated February 11, 1998, labeled "States Exhibits A, B and C" respectively, (b) with respect to Docket No. D-980211-042, the Amendment Notice dated August 24, 1998, labeled "State's Exhibit D," and (c) with respect to Docket No. D-980211-043, the Amendment Notice dated August 24, 1998, labeled "State's Exhibit E," setting forth certain charges against FPP, Friedman and Dolin (collectively, Exhibits A, B, C, D and E are referred to as the "Notices"); and

WHEREAS, on September 23, 1998, FPP, Friedman and Dolin filed a lawsuit in the Franklin County, Ohio, Court of Common Pleas commencing Case No. 98CVH09-7343, styled *Lawrence M. Friedman, et al. v. Ohio State Board of Pharmacy, et al.*, which lawsuit was dismissed by Court Order dated September 30, 1998; and

WHEREAS, FPP, Friedman and Dolin appealed such dismissal to the Tenth District Court of Appeals, Franklin County, Ohio, commencing Case No. 98 APE-10-1269, styled *Lawrence M. Friedman, et al. v. Ohio State Board of Pharmacy, et al.*; and

WHEREAS, the consolidated hearing in Pharmacy Board Docket Nos. D-980211-042, D-980211-043 and D-980211-044 was commenced on or about October 5, 1998, adjourned and continued to February 8, 1999, and has been adjourned and continued pending the drafting and execution of this Agreement; and

WHEREAS, FPP, Friedman and Dolin have denied the allegations set forth in the Notices and by this Agreement do not admit to the allegations set forth in the Notices; and

WHEREAS, FPP, Friedman and Dolin are knowingly and voluntarily acknowledging that in order to settle the allegations of illegal conduct under investigation by the Pharmacy Board and the BWC, including, but not limited to, the allegations set forth in the Notices, this Agreement is entered into on the basis of and in reliance on all of the stipulations, admissions, and understandings set forth herein; and

WHEREAS, the Ohio Industrial Commission was not a party to any investigation of FPP, Friedman and/or Dolin; and

WHEREAS, the parties hereto desire to compromise, settle, dispose of and release each other from all disputes, differences, charges and legal controversies arising out of or relating to any conduct of FPP, Friedman and/or Dolin through and including the date of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and obligations of this Agreement, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree with each other as follows:

1. The recitals set forth above are true and accurate, and are incorporated into this Agreement as if fully rewritten.

2. (A) To avoid the additional expense and cost of litigation, FPP agrees to the payment of a monetary charge in the amount of Thirteen Thousand Five Hundred Twenty-Seven Dollars and Forty-Eight Cents (\$13,527.48) to be paid as set forth in paragraph 2(C) below.

(B) FPP agrees to pay to BWC for over-charges the amount of Eighty-Six Thousand Four Hundred Seventy-Two Dollars and Fifty-Two Cents (\$86,472.52) to be paid as set forth in paragraph 2(C) below.

(C) The payments to be made as set forth in paragraphs 2(A) and 2(B) above shall be paid together in twelve (12) installments, each installment totaling Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33) by check(s) and mailed with the form attached hereto as "State's Exhibit F," to the Pharmacy Board, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320. Such installments shall be paid commencing on or before the first day of the month following the Suspension Period (as defined below in paragraph 3) as follows:

- (i) On or before the first day of the month following the Suspension Period, payment in the amount of Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33) by check made payable to "Treasurer, State of Ohio";
- (ii) On or before the first day of the month following the payment made as set forth in paragraph 2(C)(i) above, two payments, one in the amount of Five Thousand One Hundred Ninety-Four Dollars and Fifteen Cents (\$5,194.15) by check made payable to "Treasurer, State of Ohio," and the other in the amount of Three Thousand One Hundred Thirty-Nine Dollars and Eighteen Cents (\$3,139.18) by check made payable to the "Ohio Bureau of Workers' Compensation"; and
- (iii) Ten payments each in the amount of Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33) by check made payable to the "Ohio Bureau of Workers' Compensation," the first such payment due and owing on or before the first day of the month following the payment made as set forth in paragraph 2(C)(ii) above, and continuing on or before the first day of each month for nine successive months.

(D) The Pharmacy Board shall forward the checks made payable to the "Ohio Bureau of Workers' Compensation" to the attention of Tom Sant, 30 West Spring Street, Columbus, Ohio 43215.

3. Dolin agrees to a three-month suspension (the "Suspension Period") of his pharmacist identification card, No. 03-1-11043, and such suspension is effective as of the date of this Agreement. Division (B) of Section 4729.16 of the Ohio 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." Such certificate and identification card shall be forwarded to the Pharmacy Board, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320, by certified mail, return receipt requested. At the conclusion of the Suspension Period, the Pharmacy Board shall return such certificate and identification card, and shall automatically reinstate Dolin as a pharmacist in good standing.

4. Friedman agrees to the revocation of his pharmacist identification card, No. 03-1-06240, effective immediately. Division (B) of Section 4729.16 of the Ohio 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." Such certificate and identification card shall be forwarded to the Pharmacy Board, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320, by certified mail, return receipt requested.

5. If any of the parties hereto violates or breaches any terms or conditions of this Agreement, the parties hereto may institute proceedings for breach of this Agreement as permitted by the laws of the State of Ohio, including but not limited to, the enforcement of this Agreement.

6. The parties hereto acknowledge that they have had an opportunity to ask questions concerning the terms of this Agreement, that all questions asked have been answered in a satisfactory manner, and that they have had the opportunity to seek advice of counsel.

7. (A) The Pharmacy Board, on the one hand, and FPP, Friedman and Dolin, on the other, agree to release, settle, cancel, discharge and acknowledge to be fully satisfied, any and all claims, demands, charges, rights and causes of action of every kind, nature or description whatsoever, which the Pharmacy Board and FPP, Friedman and Dolin may now or hereafter have or assert against the other, or against each other, arising out of or by reason of or in any manner connected with or related to the conduct of FPP, Friedman and/or Dolin, and any other employees, owners and/or agents of FPP, Friedman and/or Dolin, through the date of this Agreement, or arising out of the subject matter of this Agreement.

(B) The BWC on the one hand, and FPP, Friedman and Dolin, on the other, agree to release, settle, cancel, discharge and acknowledge to be fully satisfied, any and all claims, demands, charges, rights and causes of action of every kind, nature or description whatsoever, which the BWC and FPP, Friedman and Dolin may now or hereafter have or assert against the other, or against each other, arising out of or by reason of or in any manner connected with or related to the conduct of FPP, Friedman and/or Dolin, and any other employees, owners and/or agents of FPP, Friedman and/or Dolin, which was the subject of the Notices or which involved similar practices of billing the BWC for drugs dispensed to BWC claimants through the date of this Agreement, or arising out of the subject matter of this Agreement.

8. BWC agrees that the conduct of FPP, Friedman and Dolin, arising out of or by reason of or in any manner connected with the investigation of allegedly illegal conduct in connection with the Notices or similar practices if billing the BWC for drugs dispensed to BWC claimants through the date of this Agreement, or arising out of matters which are the subject of this Agreement, shall not be pursued or utilized to sanction, suspend or exclude FPP as a health care provider entitled to participate in the treatment of BWC claimants.

9. As to any issues, disputes or questions regarding the future practices of FPP, Friedman and/or Dolin which arise after the date of this Agreement, FPP, Friedman and/or Dolin may make a written request regarding such issues, disputes or questions to the Pharmacy Board and/or the BWC, and the Pharmacy Board and/or the BWC shall promptly provide FPP, Friedman and/or Dolin with a written response to such request in accordance with law.

10. This Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall be deemed effective upon the latest date set forth in the signature block below.

11. This Agreement can be modified only by a writing executed by each of the parties hereto. This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and no other agreements or understandings, or any

representations or warranties with respect thereto, shall be binding on the parties unless specifically set forth herein.

12. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, members, officers, employees, attorneys, and/or agents.

13. FPP, Friedman and Dolin hereby agree to dismiss the appeal pending in the Tenth District Court of Appeals, Franklin County, Ohio, Case No. 98 APE-10-1269, with prejudice.

14. The Pharmacy Board hereby agrees that the internal investigation commenced in 1993 (Pharmacy Board Case No. 93-1461) is closed.

15. BWC agrees that the investigation commenced in 1993 (BWC Case No. 587-93) is closed.

16. This Agreement may be executed and delivered in any number of original or facsimiled counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto acknowledge that they have read the foregoing and that they understand and freely and voluntarily have executed this Agreement, and that they have the authority to so execute this Agreement, as of the date set forth next to each signature.

/s/ *Stephen H. Dolin* /d/ 4-23-99
Stephen H. Dolin, R.Ph., as an individual, and as a
Co-Owner and Officer of Fairview Park Pharmacy, Inc. Date of Signature

/s/ *Lawrence M. Friedman* /d/ 4/23/99
Lawrence M. Friedman, R.Ph., as an individual, and as a
Co-Owner and Officer of Fairview Park Pharmacy, Inc. Date of Signature

/s/ *D A Roth* /d/ 4-21 99
Dennis A. Roth, Attorney for Fairview Park Pharmacy, Inc. Date of Signature

/s/ *Alan S. Kopit* /d/ 4/29/99
Alan S. Kopit, Attorney for Lawrence M. Friedman, R.Ph.
and Stephen H. Dolin, R.Ph. Date of Signature

/s/ *Joseph J Maslak, Jr.* /d/ 4/24/99
Joseph J. Maslak, Jr.
President, Ohio State Board of Pharmacy Date of Signature

/s/ *Sally Ann Steuk* /d/ 4-23-99
Sally Ann Steuk, Ohio Assistant Attorney General Date of Signature

/s/ *Thomas J. Wersell, Director of Investigations* /d/ 4/27/99
For James Conrad, Administrator,
Ohio Bureau of Workers' Compensation Date of Signature

/s/ *Cheryl J. Nester* /d/ 4/28/99
Cheryl J. Nester, Ohio Assistant Attorney General Date of Signature

RES. 99-175 The Board was joined by Assistant Executive Director Tim Benedict who presented a request from Gregory Jacobs, R.Ph. for an alteration of his Board Order. Ms. Abele moved that the request be denied. The motion was seconded by Mr. Cavendish and approved by the Board (Aye-6/Nay-0).

RES. 99-176 Mr. Benedict then presented a request from the Kroger Company seeking permission to use a secure trailer as a pharmacy on a temporary basis while the building that served as the licensed location for the pharmacy underwent renovation. Mr. Cavendish moved that the Board grant permission for the Kroger Company to utilize the trailer until January 1, 2000. Mrs. Plant seconded the motion and it was approved by the Board (Aye-6/Nay-0).

Mr. Benedict and Mr. Winsley next presented the Kroger Prescription Care System that they had discussed with representatives from Kroger. Since the program is contained entirely within the Kroger Company and no patient-specific information is released to outside entities, there was no need for any official Board action.

Mr. Winsley distributed copies of the proposed resolutions for the National Association of Boards of Pharmacy (NABP) Annual Meeting that had been received in the Board office. The Board members were asked to review the proposed resolutions for later discussion.

A letter from the United States Pharmacopeia seeking volunteers for the 2000-2005 Committee of Revision was distributed to the Board members for their information. This item required no action from the Board.

RES. 99-177 Next, Mr. Benedict presented two requests for waivers pursuant to Ohio Administrative Code Rule 4729-5-11. Following discussion, Mrs. Neuber moved that the Board deny the request of Fred Dively, R.Ph. for approval to serve as the responsible pharmacist at the following sites:

Brown Memorial Hospital (02-0032950)
Memorial Hospital of Geneva (02-0029450)

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

RES. 99-178 Mr. Cavendish then moved that the Board approve the request of Albert Croft, R.Ph. for approval to serve as the responsible pharmacist at the following sites for a period of three months from the date of issuance of the new license:

Eastern Medical Equipment (02-0967300)
Select Specialty Hospital (02-1134800)

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

Ms. Abele reported to the Board on the recent activities of the Nursing Board Formulary Committee.

11:30 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 pursuant to Section 121.22(G)(1) of the Revised Code. Mr. Cavendish seconded the motion. President Maslak then conducted the following roll call vote: Abele-Yes, Adelman-Yes, Cavendish-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

11:35 a.m.

The Executive Session ended and the meeting was opened to the public. The Board recessed for lunch.

1:07 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 Paul Lamping.

1:08 p.m.

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

1:10 p.m.

RES. 99-179 The Executive Session ended and the meeting was opened to the public. Mr. Cavendish moved that the Board accept the settlement offer received in the matter of Jerome C. Broering. The motion was seconded by Mrs. Neuber and approved by the Board (Aye-6/Nay-0/Abstain-1[Plant]).

1:15 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 Michael Joseph Frost, R.Ph., Englewood, Ohio.

2:55 p.m.

The hearing concluded and the record was closed.

3:00 p.m.

Ms. Abele moved that the Minutes of the April 5 & 6, 1999 meeting be approved as corrected. The motion was seconded by Mr. Cavendish and approved by the Board (Aye-6/-Nay-0/Abstain-1[Adelman]).

3:02 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 Newton R. Standen, R.Ph., Medina, Ohio. Mr. Standen was not present nor was he represented by legal counsel.

3:21 p.m.

The hearing concluded and the record was closed.

3:23 p.m.

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

4:05 p.m.

RES. 99-180 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 Newton R. Standen, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-990323-042)

In The Matter Of:

NEWTON R. STANDEN, R.Ph.
3509 Marks Road
Medina, Ohio 44258
(R.Ph. No. 03-2-06815)

INTRODUCTION

THE MATTER OF NEWTON R. STANDEN, R.Ph. CAME FOR CONSIDERATION ON MAY 3, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

NEWTON R. STANDEN 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) Paul Kover, R.Ph.; 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 dated March 23, 1999.
- (2) Exhibit 1A—Response to Notice of Opportunity for Hearing with attachment signed by Newton R. Standen and dated April 2, 1999.
- (3) Exhibit 1B—Copy of Pharmacist File Front Sheet of Newton Reese Standen showing original date of registration as July 31, 1958, and two-page copy of Renewal Application for Pharmacist License, No. 03-2-06815, for a license to practice pharmacy in Ohio from September 15, 1998, to September 15, 1999 of Newton R. Standen dated August 7, 1998.
- (4) Exhibit 2—Copy of nine pages numbered 3 through 11 showing transcript of interview of Newton R. Standen by Pharmacy Board agents Paul J. Kover and Carl N. Frost on June 22, 1998.
- (5) Exhibit 3—Copy of two-page memo from Acme Pharmacy dated May 4, 1998, and signed by Joseph M. Lahovich.
- (6) Exhibit 4—Copy of signature log verification from Acme Pharmacy #72 for the period March 7, 1998, through March 25, 1998.
- (7) Exhibit 5—Copy of two-page security office report of the Fred W. Albrecht Grocery Company dated March 26, 1998, signed and dated by Newton R. Standen on March 25, 1998.
- (8) Exhibit 6—Copy of handwritten statement of Newton R. Standen signed and dated March 25, 1998.
- (9) Exhibit 7—Copy of handwritten statement of Newton R. Standen signed and notarized on June 22, 1998.
- (10) Exhibit 8—Copy of Journal Entry in the Summit County Court of Common Pleas, State of Ohio vs. Newton Reese Standen, Case No. CR 98-03-0802, dated November 25, 1998.
- (11) Exhibit 9—Copy of page two of Agent Investigation Report documenting conversation with Detective Adrian D. Johnson of the Akron Police Department dated April 2, 1998.

Respondent's Exhibits:

- (1) None

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Newton R. Standen was originally licensed in the state of Ohio on July 31, 1958, pursuant to examination, and his license to practice pharmacy in the state of Ohio lapsed on September 15, 1998.
- (2) On or about March 25, 1998, and dates preceding, Newton R. Standen, with purpose to deprive the owner of property or services, knowingly obtain or exert control over the property beyond the scope of the express or implied consent of the owner, to wit: Newton R. Standen admittedly stole approximately \$3,000.00 in cash from Acme Pharmacy #72. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (3) On or about May 22, 1998, Newton R. Standen pled guilty to Theft, a violation of Section 2913.02 of the Ohio Revised Code (felony of the fifth degree). State of Ohio vs. Newton Reese Standen, Case No. CR-98-03-0802, Summit County Common Pleas Court. On November 28, 1998, after successfully completing the Prosecutor's Diversionary Program, the indictment was dismissed.
- (4) On or about April 2, 1998, Newton R. Standen knowingly made a false statement, or knowingly swore or affirmed the truth of a false statement previously made, when the statement was made with purpose to mislead a public official in performing the public official's function, to wit: in an interview with a detective of the Akron Police Department, Newton R. Standen denied stealing money from his employer when in fact he had been stealing. His conduct in knowingly making a false statement

during an official investigation is in violation of Section 2921.13(A)(5) 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 being guilty of a felony as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (4) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

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 Newton R. Standen:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-2-06815, held by Newton R. Standen and such suspension is 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 suspends indefinitely the pharmacist identification card, No. 03-2-06815, held by Newton R. Standen and such suspension is effective as of the date of the mailing of this Order.
- (C) Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Newton R. Standen 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.
- (D) Further, Newton R. Standen may appear before the Board to petition for reinstatement of his identification card, No. 03-2-06815, anytime after Newton R. Standen submits evidence to the Board that restitution of \$3,000.00 has been paid to Acme Pharmacy #72, 1553 Plaza Boulevard, Akron, Ohio 44320.

Newton R. Standen is hereby advised that 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 office 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-7/Nay-0).

RES. 99-181 Mrs. Neuber then moved that the Board adopt the following Order in the matter of Michael Joseph Frost, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-990317-040)

In The Matter Of:

MICHAEL JOSEPH FROST, R.Ph.
1045 Hazel Avenue
Englewood, Ohio 45322
(R.Ph. No. 03-2-15157)

INTRODUCTION

THE MATTER OF MICHAEL JOSEPH FROST CAME TO HEARING ON MAY 3, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

MICHAEL JOSEPH FROST WAS REPRESENTED BY MARK SENFF, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

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

Respondent's Witnesses:

- (1) Michael Joseph Frost, Respondent
- (2) Eric Fisher, Financial Analyst
- (3) Paul Brown, Sales Representative for Liberty Mutual

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1—Copy of three-page Notice of Opportunity for Hearing letter dated March 17, 1999.
- (2) Exhibit 1A—Hearing Request letter submitted by Mark D. Senff, attorney for respondent, dated March 23, 1999.
- (3) Exhibit 1B—Copy of Hearing Schedule letter dated March 25, 1999.
- (4) Exhibit 1C—Copy of Pharmacist File Front Sheet of Michael Joseph Frost showing original date of registration as August 10, 1983, and a two-page copy of Renewal Application for Pharmacist License, No. 03-2-15157, for a license to practice pharmacy in Ohio from September 15, 1998, to September 15, 1999, of Michael Joseph Frost dated July 29, 1998.
- (5) Exhibit 2—Copy of handwritten statement of Michael Joseph Frost signed and dated February 13, 1996.
- (6) Exhibit 3—Copy of handwritten sworn statement from Michael Joseph Frost signed and dated January 21, 1998.
- (7) Exhibit 4—Two-page copy of Renewal Application for Pharmacist License, No. 03-2-15157, for a license to practice pharmacy in Ohio from September 15, 1996, to September 15, 1997, of Michael Joseph Frost dated June 28, 1996.
- (8) Exhibit 5—Two-page copy of Renewal Application for Pharmacist License, No. 03-2-15157, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Michael Joseph Frost dated July 14, 1997.

Respondent's Exhibits:

- (1) Exhibit A—Letter from Kevin L. Riddle, M.D., dated April 20, 1999.
- (2) Exhibit B—Letter from John Strickland dated April 14, 1999.
- (3) Exhibit C—
- (4) Exhibit D—
- (5) Exhibit E—
- (6) Exhibit F—

- (7) Exhibit G—Copy of CVS/pharmacy No. 4653 Customer Comment form signed by R. E. Chuck Youngs and dated June 9, 1998.
- (8) Exhibit H—Copy of CVS/pharmacy No. 4653 Customer Comment form signed by Mrs. Robert L. Thomas and dated January 26, 1999.
- (9) Exhibit I—Copy of letter from Robert H. Jackson dated April 16, 1999.
- (10) Exhibit J—Letter from Alan W. Schmidlapp dated April 15, 1999.
- (11) Exhibit K—Letter from Ernest Blouch and Carol Blouch dated April 15, 1999.
- (12) Exhibit L—Letter from Gary and Rosemary Shannon, not dated.
- (13) Exhibit M—Copy of letter from Mike Weaver, not dated.
- (14) Exhibit N—Letter from Jack Woodward dated April 15, 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 Ohio State Board of Pharmacy indicate that Michael Joseph Frost was originally licensed in the state of Ohio on August 10, 1983, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio.

(2)

- (3) Michael Joseph Frost did, on or about September 5, 1995, to October 18, 1995,

- (4) Michael Joseph Frost did, on or about June 28, 1996, knowingly make a false statement with purpose to secure issuance by a governmental agency of a license or registration, to wit:

. Such conduct is in violation of Section 2921.13(A)(5) of the Ohio Revised Code.

- (5) Michael Joseph Frost did, on or about January 21, 1998, 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 mislead a public official in performing the public official's function, to wit:

. Such conduct is in violation of Section 2921.13(A)(3) 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 a felony as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3) 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.

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 Michael Joseph Frost:

- (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. 03-2-15157, held by Michael Joseph Frost for a period of twenty-seven months and such suspension is effective as of the date of the mailing of this Order.
- (B) Further, the Board stays the last 24 months of the suspension and places Michael Joseph Frost on probation during this 24-month period. The terms of probation are as follows:
- (1) Michael Joseph Frost must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (2) Michael Joseph Frost must abide by the rules of the Ohio State Board of Pharmacy.
 - (3) Michael Joseph Frost 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.

- (C) Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Michael Joseph Frost 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.

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 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. Littlejohn and approved by the Board (Aye-7/Nay-0).

4:15 p.m.

The meeting was recessed until Tuesday, May 4, 1999.

TUESDAY, MAY 4, 1999

8:15 a.m. ROLL CALL

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

Joseph J. Maslak, R.Ph. (President); Robert B. Cavendish, R.Ph. (Vice-President); Ann D. Abele, R.Ph.; Diane C. Adelman, R.Ph.; Amonte B. Littlejohn, R.Ph.;

Suzanne L. Neuber, R.Ph.; Ruth A. Plant, R.Ph.; and Nicholas R. Repke, Public Member.

8:31 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 Jonathan Paul Burket, R.Ph., Greenhills, Ohio.

11:48 a.m.

The hearing was recessed for lunch. President Maslak announced that the hearing would resume at approximately 1:30 p.m., immediately after the Board members finished the Reciprocity Hearing scheduled for 1:00 p.m.

1:00 p.m.

RES. 99-182

All of the Board members, with the exception of Mr. Lamping, convened 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 Mrs. Adelman and approved by the Board (Aye-7/Nay-0).

BICKERS, JULIE DIANE	INDIANA
CZATT, DEBORAH JEAN	MICHIGAN
DUBAS, JENNIFER J.	NEBRASKA
FOLK, ROBERT STEVEN	SOUTH CAROLINA
HOLLENBECK, TIMOTHY E.	MICHIGAN
MORRISON, MELODY ANN	WEST VIRGINIA
MURPHY, MICHAEL ARTHUR	PENNSYLVANIA
O'NEILL, JANINE ANN	DELAWARE
REGAN, RONALD DAVID	MISSOURI
STILLION, BRENT RUSSELL	WEST VIRGINIA
WITT, STEVEN JOSEPH	KENTUCKY

1:37 p.m.

The Board reconvened in Room 1914 to continue the hearing in the matter of Jonathan Paul Burket, R.Ph.

4:00 p.m.

The hearing ended and the record was closed. The Board recessed until Wednesday, May 5, 1999.

WEDNESDAY, MAY 5, 1999

8:20 a.m. ROLL CALL

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

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

8:25 a.m.

Mr. Cavendish 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. Mr. Repke seconded the motion. President Maslak then conducted the following roll call vote: Abele-Yes, Adelman-Yes, Cavendish-Yes, Littlejohn-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

9:03 a.m.

RES. 99-183 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 Jonathan Paul Burket, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-980618-070)

In The Matter Of:

JONATHAN PAUL BURKET, R.Ph.
21 Imbler Drive
Greenhills, Ohio 45218-1129
(R.Ph. No. 03-3-14171)

INTRODUCTION

THE MATTER OF JONATHAN PAUL BURKET CAME TO HEARING ON MAY 4, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JONATHAN PAUL BURKET WAS REPRESENTED BY TERRY TATARU, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

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

Respondent's Witnesses:

- (1) Jeffrey Blumling, Director of Finance, Medi-Serv
- (2) Alfonso Trujillo Falla, M.D., Cincinnati, Ohio
- (3) John M. Evans, C.Ph.T., Christ Hospital Pharmacy
- (4) Jonathan Paul Burket, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing dated June 18, 1998.
- (2) Exhibit 1A--Hearing Request letter dated July 17, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated July 20, 1998.
- (4) Exhibit 1C--Continuance Request letter dated December 7, 1998.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated December 11, 1998.
- (6) Exhibit 1E--Copy of Pharmacist File Front Sheet of Jonathan Paul Burket showing original date of registration as July 31, 1981, and two-page copy of Renewal Application for Pharmacist License, No. 03-3-14171, for a license to practice pharmacy in Ohio from September 15, 1998, to September 15, 1999, of Jonathan Paul Burket dated August 12, 1998.
- (7) Exhibit 2--

- (8) Exhibit 2A--Certified copy of five-page Commonwealth of Kentucky, Kentucky Board of Pharmacy, in re: Jonathan P. Burket; License No. 9027, entered April 13, 1994.
- (9) Exhibit 3--Accountability Statement of Mediserv Pharmacy, Terminal Distributor No. 02-685400, for APAP/Codeine #3 dated July 29, 1996.
- (10) Exhibit 4--Accountability Statement of Mediserv Pharmacy, Terminal Distributor No. 02-685400, for Diazepam 5mg dated July 29, 1996.
- (11) Exhibit 5--Accountability Statement of Mediserv Pharmacy, Terminal Distributor No. 02-685400, for Hydrocodone 5mg/APAP 500mg dated July 29, 1996.
- (12) Exhibit 6--Accountability Statement of Mediserv Pharmacy, Terminal Distributor No. 02-685350, for Diazepam 5mg dated September 20, 1996.
- (13) Exhibit 7--Accountability Statement of Mediserv Pharmacy, Terminal Distributor No. 02-796350, for APAP/Codeine #3 dated October 16, 1996.
- (14) Exhibit 8--Accountability Statement of Mediserv Pharmacy, Terminal Distributor No. 02-796350, for APAP/Codeine #4 dated October 16, 1996.
- (15) Exhibit 9--Accountability Statement of Mediserv Pharmacy, Terminal Distributor No. 02-796350, for Hydrocodone 5mg/APAP 500mg dated October 16, 1996.
- (16) Exhibit 10--Accountability Statement of Mediserv Pharmacy, Terminal Distributor No. 02-796350, for Diazepam 5mg dated October 16, 1996.
- (17) Exhibit 11--Accountability Statement of Mediserv Pharmacy, Terminal Distributor No. 02-796350, for Diazepam 10mg dated October 16, 1996.

Respondent's Exhibits:

- (1) Exhibit A--Tabbed section covers containing copies as follows: OTR--Fifty-eight pages of weekly time sheets of Mediserv (Over the Rhine) employees dated from the week ending March 30, 1996, through the week ending September 7, 1996, for the following: Stan Abrams, Jon Burket, Loretta Englemon, Henri (Henrietta) Griffin, Monica McNear, and Joe Newmark. Reading Road--Forty-one pages of weekly time sheets of Mediserv (Reading Road) employees dated from the week ending April 6, 1996, through the week ending September 7, 1996, for the following: Stephanie Brown, Jonathan Burket, John Evans, and Stanley Abrams. Fairmount--Twenty pages of weekly time sheets of Mediserv (Fairmount) employees dated from the week ending April 6, 1996, through August 9, 1996, for the following: Stuart Graff, Monica McNear, and Denise Tolbert. Multiple--Three pages of weekly time sheets of Mediserv employees as follows: Loretta Englemon for the weeks ending April 13, 1996; April 20, 1996; May 25, 1996; and June 1, 1996; and Monica McNear for the weeks ending August 3, 1996, and August 11, 1996. Undesignated--Fifty-three pages of weekly time sheets of Mediserv employees dated from April 6, 1996, through September 7, 1996, of the following: Stanley Abrams, Loretta Englemon, John Evans, Stuart Graff, Henri Griffin, Monica McNear, Joe Newmark, Leonard S. Streicher, and Denise Tolbert.

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 Jonathan Paul Burket was originally licensed in the state of Ohio on July 31, 1981, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) Jonathan Paul Burket was, on or about October 19, 1993,

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

- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes 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 Jonathan Paul Burket:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-3-14171, held by Jonathan Paul Burket 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, Jonathan Paul Burket 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) 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.
- (C) Further, the Board will stay the indefinite suspension, reinstate Jonathan Paul Burket's license, and place the pharmacist identification card on probation for five years following the submission of an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment contract and three negative urine drug screen reports in compliance with the conditions stated in paragraph (a) below. The three negative urine drug screens may be obtained at the discretion of the treatment provider after a contract is signed. Following reinstatement, the terms of probation are as follows:
- (1) Jonathan Paul Burket must enter into a contract with an ODADAS treatment provider acceptable to the Board for a period of not less than five years from the effective date of this Order and, upon signing, submit a copy of the contract to the Board office. The contract must provide:
- (a) **Random, observed** urine drug screens shall be conducted at least every three months after the initial three urine drug screens for reinstatement. All drug screens must meet the following requirements:
- (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) Codeine, Hydrocodone, Diazepam, and Alcohol must be included in the standard urine drug screen. Testing for alcohol must be conducted within forty-eight hours from the time the sample is given. A breathalyzer may be used to test for alcohol, but the test must be conducted by an appropriately certified individual within twelve hours of notification.
- (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.
- (2) Jonathan Paul Burket is hereby advised that the Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

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

MOTION CARRIED.

SO ORDERED.

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

9:10 a.m.

RES. 99-184

The Board next conducted the election of officers for the fiscal year beginning July 1, 1999. Mr. Cavendish was elected President of the Board for the next year. The vote for the office of Vice-President resulted in a tie vote. The consensus of the Board was that the election of the new Vice-President would be postponed until June, when the Board would probably have all nine members present.

The Board then discussed the resolutions that had been proposed by other boards of pharmacy and NABP districts for consideration at the NABP Annual Meeting to be held May 22-26, 1999. The Board members planning to attend the NABP meeting were given the Board members' consensus on the resolutions provided.

RES. 99-185

The Board then discussed the continuing education program submitted by University Consultants for the Board's consideration of its applicability to the jurisprudence CPE requirements. After discussion, Ms. Abele moved that the Board approve the program for two hours of CPE credit that may be applied to the Ohio jurisprudence CPE requirement, after corrections of inaccurate material are made. The motion was seconded by Mr. Littlejohn and approved by the Board (Aye-6/Nay-0/Abstain-1[Plant]).

10:49 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 Linden Medical Pharmacy, Inc., Columbus, Ohio.

11:59 a.m.

The hearing was recessed for lunch.

1:09 p.m.

The Board reconvened with all members present except Mrs. Adelman, Mr. Lamping, and Mr. Maslak. Mr. Cavendish assumed the Chair in the absence of President Maslak. The hearing in the matter of Linden Medical Pharmacy resumed.

5:48 p.m.

The hearing ended and the record was closed.

Items for discussion not requiring a vote by the Board were distributed and discussed.

Mr. Repke then presented the probation report.

RES. 99-186

Mr. Winsley then presented a request for approval as a provider of continuing education from Pharmacotherapy Associates, Inc. After discussion, Ms. Abele moved that Pharma-

cotherapy Associates, Inc. be approved as a provider of Continuing Pharmacy Education in Ohio. The motion was seconded by Mr. Littlejohn and approved by the Board (Aye-6/-Nay-0).

6:10 p.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 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, Littlejohn-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

6:40 p.m.

RES. 99-187 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 Linden Medical Pharmacy:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-981009-020)

In The Matter Of:

LINDEN MEDICAL PHARMACY, INC.

Lawrence A. Kaufman
2349 Cleveland Avenue
Columbus, Ohio 43211

(Terminal Distributor No. 02-0138550)

INTRODUCTION

THE MATTER OF LINDEN MEDICAL PHARMACY, INC. CAME TO HEARING ON MAY 5, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

LINDEN MEDICAL PHARMACY, INC. WAS REPRESENTED BY SAMUEL B. WEINER, JACK GREGG HAUGHT, AND LYLE BROWN, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Christopher K. Reed, Ohio State Board of Pharmacy
- (2) Jerome C. Broering, R.Ph., Westerville, Ohio
- (3) Judith Pendleton, Pharmacy Technician, Linden Medical Pharmacy, Inc.
- (4) Diane Jo Swarm, Pharmacy Technician, Linden Medical Pharmacy, Inc.

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter dated October 9, 1998.
- (2) Exhibit 1A--Hearing Request letter dated October 28, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated November 3, 1998.
- (4) Exhibit 1C--Copy of Renewal Application for DDD License, No. 02-0138550, for a terminal Distributor of Dangerous Drugs License from January 1, 1998, to December 31, 1998, of Linden Medical Pharmacy, Inc. signed by Jerome C. Broering dated October 21, 1997.
- (5) Exhibit 1D--Continuance Request letter dated March 2, 1999.
- (6) Exhibit 1E--Hearing Schedule letter dated March 10, 1999.

- (7) Exhibit 1F--Hearing Schedule letter dated April 19, 1999.
- (8) Exhibit 2--Accountability Statement of Linden Medical Pharmacy for APAP/Codeine #4 dated October 15, 1996.
- (9) Exhibit 3--Accountability Statement of Linden Medical Pharmacy for Diazepam 10mg dated October 15, 1996.
- (10) Exhibit 4--Accountability Statement of Linden Medical Pharmacy for Adipex-P dated October 15, 1996.
- (11) Exhibit 5--Accountability Statement of Linden Medical Pharmacy for Phentermine HCL 37.5mg dated October 15, 1996.
- (12) Exhibit 6--Notarized Statement of Jerome C. Broering dated May 30, 1997.
- (13) Exhibit 7--Accountability Statement of Linden Medical Pharmacy for Talwin NX dated October 15, 1996.
- (14) Exhibit 8--Two-page Dangerous Drug Distributor Inspection Report of Linden Medical Pharmacy, Inc. dated October 15, 1996.
- (15) Exhibit 9--Letter from Jerome C. Broering, not dated, received October 30, 1996.
- (16) Exhibit 10--Copy of six Audit Comparison-Linden Medical Pharmacy reports for time periods covering August 19, 1995, through October 14, 1996, and October 15, 1996, through March 11, 1998.

Respondent's Exhibits:

- (1) Exhibit A--Five-page table titled "Ohio State Board of Pharmacy Orders and Settlement Agreements Involving Terminal Distributors (Jun. 1996 to Feb. 1999)".
- (2) Exhibit B--Copy of two-page letter from Kevin P. Byers dated March 24, 1999.
- (3) Exhibit C--Copy of four-page Notice of Opportunity for Hearing letter of Jerome C. Broering dated October 9, 1998.
- (4) Exhibit D--Copy of letter from Lawrence A. Kaufman dated April 20, 1999.
- (5) Exhibit E--Copy of Notification of Change of Responsible Person form of Linden Medical Pharmacy signed by Robert M. Feldman with an effective date of April 21, 1999.
- (6) Exhibit F--Copy of seven-page Linden Medical Pharmacy, Inc. Company Policy, not dated.
- (7) Exhibit G--Copy of four-page Settlement Proposal of Linden Medical Pharmacy, Inc. dated April 30, 1999.
- (8) Exhibit H--Copy of Diverted Drug Report of Linden Medical Pharmacy, Inc. dated May 16, 1997.
- (9) Exhibit I--Two-page copy of Renewal Application for Pharmacist License, No. 03-2-10130, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Jerome C. Broering dated November 4, 1997.
- (10) Exhibit J--Copy of Pharmacist File Front Sheet of Jerome Charles Broering showing original date of registration as July 20, 1972; and two-page copy of Renewal Application for Pharmacist License, No. 03-2-10130, for a license to practice pharmacy in Ohio from September 15, 1998, to September 15, 1999, of Jerome C. Broering dated August 4, 1998.
- (11) Exhibit K--Copy of Complaint in the Franklin County Municipal Court, Case No. 33196-1, State of Ohio vs. Jerome C. Broering, dated December 12, 1997.
- (12) Exhibit L--Copy of Complaint in the Franklin County Municipal Court, Case No. 33196-2, State of Ohio vs. Jerome C. Broering dated December 12, 1997.
- (13) Exhibit M--Copy of Complaint in the Franklin County Municipal Court, Case No. 33196-3, State of Ohio vs. Jerome C. Broering dated December 12, 1997.
- (14) Exhibit N--Copy of Entry in the Franklin County Municipal Court, Case No. 33196/97, State of Ohio vs. Jerome C. Broering dated April 1, 1998.
- (15) Exhibit O--Handwritten notes dated from December 10, 1996, through January 17, 1997.
- (16) Exhibit P--Copy of Controlled Substance Inventory cover page signed by Joseph M. Mink and dated August 18, 1995, pages 7 through 28 of Biennial Controlled Substance Inventory report dated April 8, 1993, and hand-completed Biennial Controlled Substance Inventory Date form, not dated.

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that during the relevant time periods stated herein, Jerome C. Broering was the Responsible Pharmacist at Linden Medical

Pharmacy, Inc. pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.

- (2) Linden Medical Pharmacy, Inc. did, from August 18, 1995, through October 15, 1996, knowingly sell controlled substances in amounts exceeding fifty times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Linden Medical Pharmacy, Inc. sold the following controlled substances without prescriptions and not for a legitimate medical purpose:

<u>Drug</u>	<u>Schedule</u>	<u>Shortage</u>	<u>% of Stock</u>
APAP with Codeine #4	III	14,124	49%
Diazepam 10mg	IV	48,900	38.5%
Adipex-P	IV	6,919	12.0%
Phentermine HCl 37.5mg	IV	10,702	14.9%

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

- (3) Linden Medical Pharmacy, Inc. did, from August 18, 1995, through October 15, 1996, knowingly sell controlled substances in an amount exceeding five times the bulk amount but not exceeding fifty times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Linden Medical Pharmacy, Inc. sold the following controlled substances without prescriptions and not for a legitimate medical purpose:

<u>Drug</u>	<u>Schedule</u>	<u>Shortage</u>	<u>% of Stock</u>
Talwin NX	IV	2,715	6.7%

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

- (4) Linden Medical Pharmacy, Inc. did, from August 18, 1995, through October 15, 1996, fail to keep a record of all controlled substances received or dispensed by the pharmacy which contained the name and place of residence of each person to whom controlled substances were dispensed, to wit: Linden Medical Pharmacy, Inc. and/or its employees sold the controlled substances listed in paragraphs (2) and (3) above but kept no records of the sales. Such conduct is in violation of Section 3719.07 of the Ohio Revised Code and Rule 4729-9-14 of the Ohio Administrative Code.
- (5) Linden Medical Pharmacy, Inc. did, from August 18, 1995, through October 15, 1996, fail to provide effective and approved controls and procedures to guard against theft and diversion of dangerous drugs, to wit: Linden Medical Pharmacy, Inc. had inadequate supervision and control over the controlled substances so as to prevent, deter, or detect the diversion of the controlled substances. Such conduct is in violation of Rule 4729-9-05 of the Ohio Administrative Code.
- (6) Linden Medical Pharmacy, Inc. did, on or about October 15, 1996, and dates prior thereto, fail to maintain the minimum standards for a pharmacy, to wit: Linden Medical Pharmacy, Inc. did not possess a copy of current federal and state laws, regulations, and rules governing the legal distribution of drugs in Ohio. Such conduct is in violation of Rule 4729-9-02 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 (4) 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) through (4) 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)(4) 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 Linden Medical Pharmacy, Inc.:

- (1) 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. 02-0138550, held by Linden Medical Pharmacy, Inc. effective as of the date of the mailing of this Order.
- (2) 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. 02-0138550, held by Linden Medical Pharmacy, Inc. effective as of the date of the mailing of this Order.

Division (B)(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 his 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 Mr. Littlejohn and approved by the Board (Aye-5/Nay-1).

6:49 p.m.

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

PER DIEM	<u>4/14</u>	<u>5/3</u>	<u>5/4</u>	<u>5/5</u>	<u>Total</u>
Abele	-	1	1	1	3
Adelman	-	1	1	1	3
Cavendish	-	1	1	1	3
Lamping	-	-	-	-	0
Littlejohn	-	1	1	1	3
Maslak	1	1	1	1	4
Neuber	-	1	1	1	3
Plant	-	1	1	1	3
Repke	-	1	1	1	3

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

6:50 p.m.

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

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

/d/ June 16, 1999
Date

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