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Ohio State Board of Pharmacy 77 South High Street, Room 1702 Columbus, Ohio 43215-6126
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Minutes of the March 5-7, 2007 **Meeting of the Ohio State Board of Pharmacy**

MONDAY, MARCH 5, 2007

10:03 a.m. The Ohio State Board of Pharmacy convened in Room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

James E. Turner, R.Ph., *President*; Gregory Braylock, R.Ph., *Vice-President*; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Also present were William T. Winsley, *Executive Director*; Timothy Benedict, *Assistant Executive Director*; William McMillen, *Licensing Administrator*; Mark Keeley, *Legislative Affairs Administrator*; David Rowland, *Legal Affairs Administrator*; Danna Droz, *Prescription Drug Monitoring Administrator*, and Sally Ann Steuk, *Assistant Attorney General*.

R-2007-135 Mr. Winsley announced that the following Settlement Agreement with **Karen Amberg Hall**, R.Ph. (03-3-11810) Columbus, Ohio was signed by all parties and is now effective.

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

Docket Number D-060310-063

in the matter of:

KAREN GAIL AMBERG HALL, R.Ph.

453 Wetmore Road
Columbus, Ohio 43214

R.Ph. Number 03-3-11810

This Settlement Agreement is entered into by and between Karen Gail Amburg Hall, hereinafter referred to as Karen Hall, and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Karen Hall voluntarily enters into this Agreement being fully informed of her rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel, the right to a formal adjudication hearing on the issues contained herein, and the right to appeal. Karen Hall acknowledges that by entering into this agreement she has waived her rights under Chapter 119. of the Revised Code.

Whereas, the 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 enforce a monetary penalty on the license holder for violation of any of the enumerated grounds therein.

Whereas, Karen Hall is licensed to practice pharmacy in the State of Ohio.

Whereas, on or about March 10, 2006, pursuant to Chapter 119. of the Ohio Revised Code, Karen Hall was notified of the allegations or charges against her, her right to a hearing, her rights in such hearing, and her right to submit contentions in writing. Karen Hall requested a hearing; it was scheduled, continued, and then held on September 12, 2006, before the Ohio State Board of Pharmacy.

Karen Hall neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated March 10, 2006; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of pursuing the formal appeal under Chapter 119. of the Ohio Revised Code at this time, Karen Hall knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (1) Ms. Hall's psychiatrist should submit his evaluation to the Board indicating his evaluation, treatment plan, and opinion as to Ms. Hall's fitness to practice pharmacy safely;
- (2) Ms. Hall's neurologist should submit his evaluation to the Board indicating his evaluation, treatment plan, and opinion as to Ms. Hall's fitness to practice pharmacy safely;
- (3) Once items (1) and (2) above have been presented to the Board, and if the opinions are satisfactory in that each has performed his evaluation, formulated a treatment plan, and has expressed his opinion that Ms. Hall is fit to practice pharmacy, the Board will re-issue Ms. Hall's license to practice pharmacy under the following terms:
- (4) Ms. Hall shall contact the Board prior to accepting any new position as a pharmacist;
- (5) Ms. Hall shall provide her employer(s) and her treating physicians with a copy of the consent agreement;
- (6) Each treating physician must agree to report to the Board if Ms. Hall fails to follow his treatment plan against the professional judgment of the physician;
- (7) Each physician must agree to report to the Board if it appears that Ms. Hall's condition has deteriorated to a point that it is unsafe for her to practice pharmacy.

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

Karen Hall waives any and all claims or causes of action she may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. Karen Hall, by and through her attorney, agrees to dismiss her appeal currently pending in the Franklin County Common Pleas Court and waives any further rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

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

/s/
Karen Gail Amberg Hall, R.Ph., Respondent

/d/ 02/27/07
Date Signed

/s/
Elizabeth Y. Collis, Attorney for Respondent

/d/ 02/27/07
Date Signed

/s/
James E. Turner, President,
Ohio State Board of Pharmacy

/d/ 03/05/07
Date Signed

/s/
Sally Ann Steuk,
Ohio Assistant Attorney General

/d/ 03/05/07
Date Signed

10:06 a.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code and to confer with an attorney for the Board regarding pending or imminent court action pursuant to Section 121.22(G)(3) of the Ohio Revised Code. The motion was seconded by Mrs. Teater and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Pasquale – yes; Lipsyc – yes; and Teater – yes.

11:07 a.m. The Executive Session ended.

R-2007-136 Mrs. Gregg moved that the Board accept the Settlement Offer presented in the matter of **Home Medical Enhancement Services, Inc.** (02-1299000) Cincinnati, Ohio. The motion was seconded by Ms. Eastman and approved by the Board: Aye – 7.

R-2007-137 Mr. Braylock moved that the continuance request from **Richard Berning**, R.Ph., (03-3-11901) Batavia, Ohio be denied. The motion was seconded by Mrs. Gregg and approved by the Board: Aye – 7.

R-2007-138 Mr. Braylock moved that the Settlement Offer from **Michael Esber**, R.Ph., (03-1-13497) Louisville, Ohio be denied and that a hearing be held. The motion was seconded by Ms. Eastman and approved by the Board: Aye – 7.

R-2007-139 Mrs. Gregg moved that the Settlement Offer from **Jennifer Mender**, R.Ph., (03-2-26140) Amesville, Ohio be denied. Mrs. Teater seconded the motion and it was approved by the Board: Aye – 7.

R-2007-140 Mr. Braylock moved that the Settlement Offer from **Robert Temple**, R.Ph., (03-3-11759) Waldo, Ohio be denied. The motion was seconded by Mrs. Gregg and approved by the Board: Aye – 7.

R-2007-141 Mrs. Gregg moved that the Settlement Offer from **John Brossart**, R.Ph., (03-1-07380) Hamilton, Ohio be accepted pending his acceptance of Board revisions. Mr. Braylock seconded the motion and it was approved by the Board: Aye – 7.

R-2007-142 Mr. Braylock moved that the Settlement Offer from **Teri Lee Varney**, R.Ph., (03-2-13951) Waverly, Ohio be accepted pending her acceptance of Board revisions. Mrs. Gregg seconded the motion and it was approved by the Board: *Aye – 7.*

11:16 a.m.

R-2007-143 The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

Teregen Laboratories (02-1235150)
Various Physician Offices listed on letter of request

After discussion, Mrs. Gregg moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Mr. Lipsyc and approved by the Board: *Aye – 7.*

R-2007-144 The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

Aultman Infusion Services (02-0736200)
Aultman Dialysis Center of Canton (02-1076150)

After discussion, Mr. Giacalone moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Ms. Pasquale and approved by the Board: *Aye – 7.*

R-2007-145 The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-11 (Responsible person) asking that **Jae-Sung Lee**, R.Ph., (03-3-22050) Dublin, Ohio be permitted to be the responsible person for the following sites:

Caringwell Pharmacy (02-1428000)
R.Ph. Care, Inc. (TDDD pending)

After discussion, Mrs. Gregg moved that the Board approve the request for 2 months. The motion was seconded by Mr. Braylock and approved by the Board: *Aye – 7.*

Mr. Braylock said the Nursing Board's Committee on Prescriptive Governance did not meet this month.

Mrs. Droz presented the Prescription Drug Monitoring Program Report.

11:35 a.m. The Board recessed for lunch.

1:03 p.m. The Board reconvened with the following members present:

James E. Turner, R.Ph., *President*; Gregory Braylock, R.Ph., *Vice-President*; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

R-2007-146 A request to be registered as a Continuing Pharmacy Education provider was received from **Affiliated Computer Service, Inc.** After discussion, Mrs. Gregg moved that the request be approved. Ms. Pasquale seconded the motion and it was approved by the Board: *Aye – 7.*

R-2007-147 A request to be registered as a Continuing Pharmacy Education provider was received from **Knox Community Hospital Pharmacy.** After discussion, Mrs. Gregg moved that the request be approved. Mr. Lipsyc seconded the motion and it was approved by the Board: *Aye – 7.*

R-2007-148 The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

Ritzman Natural Health Pharmacy, Akron (02-1548700)

Other sites as specified in the letter of request

After discussion, Mr. Giacalone moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Ms. Pasquale and approved by the Board: Aye – 7.

- 1:12 p.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Braylock and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Pasquale – yes; and Teater – yes.
- 1:30 p.m. The Executive Session ended and the Board recessed briefly.
- 1:39 p.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Rudolph Alan Kozan**, R.Ph., (03-1-10873) Mentor, Ohio.
- 2:53 p.m. The hearing ended and the case was closed.
- 2:59 p.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Braylock and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Pasquale – yes; and Teater – yes.
- 3:14 p.m. The Executive Session ended and the meeting was opened to the public.

R-2007-149 Mr. Braylock moved that the following order be accepted in the matter of **Rudolph Alan Kozan**, R.Ph., (03-1-10873) Mentor, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-060706-001

in the matter of:

RUDOLPH ALAN KOZAN, R.PH.

8851 Doral
Mentor, Ohio 44060

R.Ph. Number 03-1-10873

INTRODUCTION

The matter of Rudolph Alan Kozan came for hearing on March 5, 2007, before the following members of the Board: James E. Turner, R.Ph. (*presiding*); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Rudolph Alan Kozan was represented by Anthony G. Palmieri, Jr. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness:

Frank J. Bodi, Ohio State Board of Pharmacy

Respondent's Witness: Rudolph A. Kozan, R.Ph., Respondent

State's Exhibits:

1. Notice of Opportunity For Hearing letter [07-06-06]
- 1A-1C. Procedurals
2. Statement of Rudy Kozan [03-07-06]
3. MGI Security Department Incident Report [03-07-06]
4. Copy of four photographs [02-11-06 to 02-19-06]
5. Notarized Statement of Rudolph A. Kozan [03-15-06]
6. Electronic Mail Message from Rudy302 to Franke 95 [03-21-06]
7. Letter from Rudy Kozan to Barbara Carlson [02-10-07]

Respondent's Exhibits:

- A. Copy of Evaluation letter from Deborah Bonem, L.I.S.W. [02-08-07]
- B-D. Three letters of support and character reference [02-25-06 to 02-25-07]
- E. Letter from Anthony G. Palmieri, Jr. to William T. Winsley, M.S., R.Ph. [09-08-06]
- F. Letter from Anthony G. Palmieri, Jr. to William T. Winsley, M.S., R.Ph. [03-05-07]
- G. Copy of Restitution documentation [03-07-06 to 09-21-06]

FINDINGS OF FACT

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

- (1) Records of the State Board of Pharmacy indicate that Rudolph Alan Kozan was originally licensed by the State of Ohio as a pharmacist on July 30, 1974, pursuant to examination, and is currently licensed to practice pharmacy in Ohio.
- (2) Rudolph Alan Kozan did, from September, 2005, through February, 2006, with purpose to deprive, knowingly obtain or exert control over the property of another by deception, to wit: Rudolph Alan Kozan admittedly stole cash from his employer, Marc's Pharmacy, by under-ringing sales and/or prescription co-payments and pocketing the cash. Rudolph Alan Kozan has admitted to doing this 2 to 3 times per week, stealing between \$30.00 and \$50.00 each time, stealing a total of approximately \$2,400.00. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

CONCLUSIONS OF LAW

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

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby adjudicates the matter of Rudolph Alan Kozan as follows:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends for six months the pharmacist identification card, No. 03-1-10873, held by Rudolph Alan Kozan effective as of the date of the mailing of this Order. Further, the Board suspends three months of the suspension.
- (1) Rudolph Alan Kozan, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
 - (2) Rudolph Alan Kozan pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.
- (B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes on Rudolph Alan Kozan a monetary penalty of one thousand dollars (\$1,000.00) due and owing within thirty days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.
- (C) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby places Rudolph Alan Kozan on probation for two years effective upon reinstatement of his identification card. The terms of probation are as follows:
- (1) The State Board of Pharmacy hereby declares that Rudolph Alan Kozan'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) Rudolph Alan Kozan may not serve as a responsible pharmacist.
 - (3) Rudolph Alan Kozan must not violate the drug laws of Ohio, any other state, or the federal government.
 - (4) Rudolph Alan Kozan must abide by the rules of the State Board of Pharmacy.
 - (5) Rudolph Alan Kozan must comply with the terms of this Order.
 - (6) Rudolph Alan Kozan's license is deemed not in good standing until successful completion of the probationary period.
 - (7) Any violation of probation may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.

Rudolph Alan Kozan 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.

Mrs. Gregg seconded the motion and it was approved by the Board: *Aye – 6/Nay – 1.*

3:20 p.m. The Board recessed for the day.

TUESDAY, MARCH 6, 2007

9:00 a.m. The Ohio State Board of Pharmacy convened in Room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

James E. Turner, R.Ph., *President*; Gregory Braylock, R.Ph., *Vice-President*; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

9:03 a.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Timothy Gilmartin**, R.Ph., (03-2-12551) Canal Fulton, Ohio.

9:56 a.m. The hearing ended and the record was closed.

9:58 a.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Braylock and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

10:14 a.m. The Executive Session ended and the meeting was opened to the public.

R-2007-150 Mr. Braylock moved that the Board adopt the following order in the matter of **Timothy Gilmartin**, R.Ph., (03-2-12551) Canal Fulton, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-060817-006

in the matter of:

TIMOTHY E. GILMARTIN, R.PH.
7617 Diamondback Avenue, N.W.
Canal Fulton, Ohio 44614

R.Ph. Number 03-2-12551

INTRODUCTION

The matter of Timothy E. Gilmartin came for hearing on March 6, 2007, before the following members of the Board: James E. Turner, R.Ph. (*presiding*); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Timothy E. Gilmartin was not represented by counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses: Thomas Michael Miksch, Ohio State Board of Pharmacy
Timothy E. Gilmartin, R.Ph., Respondent

Respondent's Witnesses: None

State's Exhibits:

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [08-17-06]
- 1A-1B. Procedurals
- 1C. Addendum Notice [02-13-07]
- 1D-1E. Procedurals
2. State Board of Pharmacy Order, with attachments, in re Timothy E. Gilmartin [01-29-88]
3. Notarized Statement of Timothy Gilmartin [08-11-06]
4. Three Photographs of two Stock Bottles of Hydrocodone 7.5/750 mg and 5/500 mg tablets [not dated]
5. Dangerous Drug Distributor Inspection Report/Receipt [08-11-06]
6. Indictment, State of Ohio v. Timothy E. Gilmartin, Case No. 2006-09-3529 [10-05-06]; Journal Entry [11-20-06]

Respondent's Exhibits: None

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Timothy E. Gilmartin was originally licensed by the State of Ohio as a pharmacist on August 9, 1978, pursuant to examination, and that his license was summarily suspended on August 17, 2006. Records further reflect that Timothy E. Gilmartin was previously disciplined by the Board on January 29, 1988.
- (2) Timothy E. Gilmartin is addicted to or abusing drugs and/or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Timothy E. Gilmartin has admitted to a Board agent that he is addicted to hydrocodone. Timothy E. Gilmartin has admitted to stealing hydrocodone, a Schedule III controlled substance, from his employers for the past ten years. Timothy E. Gilmartin indicated that he stole approximately one to two 500-count bottles of hydrocodone per month for his own personal abuse. Such conduct indicates that Timothy E. Gilmartin is within the ambit of Sections 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.
- (3) Timothy E. Gilmartin did, on or about the month of August, 2006, with purpose to deprive, knowingly obtain or exert control over a bottle of 500 unit doses of hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance, the property of CVS, by deception, to wit: Timothy E. Gilmartin admittedly stole a full stock bottle of hydrocodone from his employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Timothy E. Gilmartin did, on or about the month of August, 2006, with purpose to deprive, knowingly obtain or exert control over a bottle of 500 unit doses of hydrocodone/APAP 5/500 mg, a Schedule III controlled substance, the property of CVS, by deception, to wit: Timothy E. Gilmartin

admittedly stole a full stock bottle of hydrocodone from his employer, and he relinquished to a Board agent 295 tablets that he had yet to consume. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (5) On or about November 20, 2006, Timothy E. Gilmartin pled guilty to two (2) counts of Possession of Drugs, felonies of the third degree, under Section 2925.11(A), two (2) counts of Theft of Drugs, felonies of the fourth degree, under Section 2913.02(A)(3) of the Ohio Revised Code. Timothy E. Gilmartin was granted Intervention in Lieu of Conviction. State of Ohio vs. Timothy E. Gilmartin, Case No. CR 06 09 3529, Summit County Common Pleas Court.

CONCLUSIONS OF LAW

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

DECISION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Timothy E. Gilmartin on August 17, 2006.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-2-12551, held by Timothy E. Gilmartin and such suspension is effective as of the date of the mailing of this Order.

- (A) Timothy E. Gilmartin, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
- (B) Timothy E. Gilmartin, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

Further, after three years from the effective date of this Order, the Board will consider any petition filed by Timothy E. Gilmartin for a hearing, pursuant to Ohio Revised Code Chapter 119., for reinstatement. The Board will only consider reinstatement of the license to practice pharmacy in Ohio if the following conditions have been met:

- (A) Timothy E. Gilmartin must enter into a new contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, and submit a copy of the signed contract to the Board office. The contract must provide that:
 - (1) Random, observed urine drug screens shall be conducted at least once each month.
 - (a) 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.
 - (b) Results of all drug screens must be negative. Refusal of a drug screen or a diluted drug screen is equivalent to a positive result. 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.
 - (2) The intervener/sponsor shall submit to the Board reports, in a format acceptable to the Board, indicating drug screens and their results in a timely fashion. Actual copies of drug screens shall be made available to the Board upon request.
 - (3) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - (4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (B) Timothy E. Gilmartin must demonstrate satisfactory proof to the Board that he is no longer addicted to or abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.
- (C) Timothy E. Gilmartin must provide, at the reinstatement petition hearing, documentation of the following:
 - (1) An effort of payment for restitution to CVS Pharmacy;
 - (2) Compliance with the contract required above (e.g.-proof of giving the sample within twelve hours of notification and copies of all drug screen reports, meeting attendance records, treatment program reports, etc.);
 - (3) Compliance with the continuing pharmacy education requirements set forth in Chapter 4729-7 of the Ohio Administrative Code as applicable and in effect on the date of petitioning the Board for reinstatement;
 - (4) Compliance with the terms of this Order.

- (D) If reinstatement is not accomplished within four years of the effective date of this Order, Timothy E. Gilmartin must also show successful completion of the NAPLEX and MPJE examinations or equivalent examinations approved by the Board.
- (E) Upon such time as the Board may consider reinstatement, Timothy E. Gilmartin will be afforded a Chapter 119. hearing. At such time, the Board may consider reinstatement with or without restrictions and/or conditions as the Board deems appropriate under the circumstances.

Mr. Mitchell seconded the motion and it was approved by the Board: Aye – 8.

10:16 a.m. The Board recessed briefly.

10:26 a.m. Mr. Keeley presented the Legislative Report.

Mr. Benedict and the Board discussed a proposal from the **Warren County Drug Task Force** concerning the requirements for a photo ID when picking up a filled Controlled Substance prescription from a pharmacy. The Board decided to take the matter under consideration.

Ms. Eastman and Mr. Benedict presented the Probation Report. No Board action was required.

Mr. Mitchell said that the Physician Assistant Policy Committee meeting scheduled for February 13 was cancelled and that there has been no meeting since January.

Mr. Benedict said there was no Medical Board Prescribing Committee Report this month.

11:43 a.m. The Board recessed for lunch.

1:30 p.m.

R-2007-151

The Board reconvened and met with the following candidates for licensure by reciprocity in Room South A, 31st floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio. The candidates introduced themselves and participated in a discussion of pharmacy laws and rules with Mr. McMillen and the Board. They were then presented their pharmacist identification cards.

Carlota Ossandon Andrews	03-1-27732	Illinois
V. Christina Fairley	03-1-27733	Texas
Melissa Ann Goodhart	03-1-27740	Pennsylvania
Janie Kim	03-1-27706	Maryland
Ralph Michael Leoni	03-1-27721	Iowa
Jaime Lynn Morton	03-1-27731	Kentucky
James Joseph Noonan, III	03-1-27728	Pennsylvania
Amber Dale Sapp	03-1-27730	Kentucky
Adam Daniel Schwartz	03-1-27727	Alaska
Peter Paul Senchyshak	03-1-27744	Pennsylvania
Jacob Dustin Summer	03-1-27700	Georgia

2:00 p.m. The Board then convened in Room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with all members present.

2:05 p.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Richard J. Berning**, R.Ph., (03-3-11901) Batavia, Ohio.

3:06 p.m. The hearing ended and the record was closed.

3:07 p.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Ms. Pasquale and a roll-call vote was conducted

by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

3:35 p.m. The Executive Session ended and the meeting was opened to the public.

R-2007-152 Mrs. Teater moved that the Board adopt the following order in the matter of **Richard J. Berning**, R.Ph., (03-3-11901) Batavia, Ohio.

NUNC PRO TUNC
ORDER OF THE STATE BOARD OF PHARMACY
(APRIL 23, 2007 FOR APRIL 12, 2007)
Docket Number D-060810-004

in the matter of:

RICHARD J. BERNING, R.PH.
4000 State Route 132
Batavia, Ohio 45103

R.Ph. Number 03-3-11901

INTRODUCTION

The matter of Richard J. Berning came for hearing on March 6, 2007, before the following members of the Board: James E. Turner, R.Ph. (presiding); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Richard J. Berning was represented by James Lindon. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: Richard Haun, Ohio State Board of Pharmacy

Respondent's Witness: Richard J. Berning, R.Ph., Respondent

State's Exhibits:

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [08-10-06]
- 1A. State Board of Pharmacy Order in re Richard J. Berning, R.Ph. [08-23-06]
- 1B-1G. Procedurals
2. State Board of Pharmacy Order in re Richard J. Berning, R.Ph. [11-10-04]
3. Indictment, State of Ohio vs. Richard Berning, Case No. B 0604421, Hamilton County Common Pleas Court [05-25-06]; Journal Entry [07-20-06]
4. Statement of Richard J. Berning [04-21-06]
5. Notarized Statement of Richard J. Berning [04-25-06]
6. Report of Prescriptions Created and Submitted for Rebate [04-15-05 to 04-14-06]
7. Copies of Forged Rebate Requests to Astra Zeneca [04-15-05 to 04-03-06]
8. Copies of Forged Rebate Requests to Aventis [10-26-05 to 04-27-06]
9. Copies of Forged Rebate Requests to Schering-Plough [10-03-05 to 12-12-05]

Respondent's Exhibits:

None

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Richard J. Berning was originally licensed by the State of Ohio as a pharmacist on August 4, 1976, pursuant to examination, and is currently licensed to practice pharmacy in Ohio. Records further reflect that Richard J. Berning was previously disciplined by the Board on November 10, 2004.
- (2) Richard J. Berning did, from April 15, 2005, through April 14, 2006, intentionally create false or forged prescriptions, to wit: Richard J. Berning created the following 115 fraudulent prescriptions while practicing pharmacy at CVS/Pharmacy #6123, he assigned prescription numbers, and then deleted the prescriptions from the computer. Richard J. Berning created these documents so that he could submit them to drug companies and obtain cash rebates.

RX#	Date	Drug
323204	04/15/05	Toprol XL
323203	04/15/05	Crestor
323201	04/15/05	Crestor
323202	04/15/05	Toprol XL
323677	04/19/05	Crestor
325160	04/29/05	Crestor
328790	05/25/05	Crestor
328957	05/27/05	Toprol XL
333421	06/30/05	Crestor
337573	08/04/05	Crestor
337968	08/08/05	Toprol XL
337969	08/08/05	Toprol XL
337915	08/15/05	Crestor
341805	08/22/05	Crestor
345374	08/22/05	Crestor
332916	08/22/05	Crestor
332585	08/22/05	Crestor
341228	08/22/05	Crestor
341678	09/04/05	Crestor
342025	09/06/05	Toprol XL
368380	09/07/05	Crestor
345573	09/19/05	Crestor
345380	09/19/05	Crestor
329111	09/19/05	Crestor
345779	09/28/05	Crestor
345560	10/03/05	Nasonex
345582	10/04/05	Crestor
349417	10/12/05	Crestor
349083	10/12/05	Crestor
349162	10/12/05	Crestor
345572	10/19/05	Crestor
349410	10/19/05	Crestor
349411	10/19/05	Crestor

RX#	Date	Drug
349171	10/19/05	Crestor
348687	10/26/05	Penlac
348837	10/26/05	Penlac
348692	10/26/05	Penlac
348840	10/27/05	Penlac
349087	10/29/05	Nasonex
349084	10/29/05	Penlac
349093	10/29/05	Penlac
349174	10/30/05	Nasonex
349105	10/30/05	Penlac
349407	11/01/05	Nasonex
349421	11/01/05	Nasonex
349611	11/01/05	Nasonex
349617	11/01/05	Nasonex
354845	11/07/05	Crestor
355163	11/07/05	Crestor
355076	11/09/05	Crestor
354678	11/09/05	Crestor
355376	11/14/05	Crestor
355594	11/16/05	Crestor
353510	11/19/05	Penlac
352814	11/23/05	Penlac
352821	11/24/05	Penlac
352825	11/24/05	Penlac
352823	11/24/05	Benzaclin
352976	11/26/05	Benzaclin
352975	11/26/05	Penlac
353073	11/27/05	Penlac
353511	11/29/05	Penlac
354674	12/07/05	Nasonex
354978	12/08/05	Nasonex
354844	12/08/05	Nasonex
354993	12/08/05	Nasonex
355078	12/10/05	Nasonex
355166	12/11/05	Nasonex
355374	12/12/05	Nasonex
333431	12/21/05	Toprol XL
333099	12/21/05	Crestor
357176	12/23/05	Benzaclin
357268	12/24/05	Penlac
357269	12/24/05	Benzaclin
357357	12/25/05	Penlac
357471	12/26/05	Penlac
357463	12/26/05	Penlac
357465	12/26/05	Benzaclin
357473	12/26/05	Benzaclin
357651	12/27/05	Penlac
357659	12/27/05	Benzaclin
357658	12/27/05	Penlac
341399	12/27/05	Crestor
361255	01/02/06	Penlac
338361	01/04/06	Crestor
338197	01/04/06	Toprol XL

RX#	Date	Drug
359795	01/11/06	Benzaclin
360928	01/18/06	Penlac
361086	01/19/06	Benzaclin
361370	01/22/06	Benzaclin
361424	01/22/06	Benzaclin
361369	01/22/06	Penlac
361651	01/23/06	Benzaclin
361798	01/24/06	Penlac
361799	01/24/06	Benzaclin
369725	03/15/06	Benzaclin
369724	03/15/06	Penlac
369721	03/15/06	Crestor
367886	03/15/06	Crestor
369909	03/16/06	Benzaclin
370108	03/17/06	Benzaclin
370202	03/18/06	Benzaclin
370258	03/19/06	Benzaclin
370477	03/20/06	Benzaclin
370481	03/20/06	Penlac
370630	03/21/06	Penlac
370625	03/21/06	Penlac
370627	03/21/06	Benzaclin
332728	03/27/06	Crestor
342016	03/27/06	Crestor
369720	03/27/06	Crestor
369723	04/03/06	Crestor
369722	04/03/06	Crestor
373805	04/12/06	Benzaclin
374161	04/14/06	Benzaclin

Such conduct is in violation of Section 2925.23 of the Ohio Revised Code.

- (3) Richard J. Berning did, from April 15, 2005, through April 3, 2006, with purpose to deprive, knowingly obtain or exert control over money, the property of Astra Zeneca, by deception, to wit: Richard J. Berning created false prescriptions and sent them to Astra Zeneca to obtain rebate money for sales that did not exist. Richard J. Berning sent thirty-three rebate requests to this drug manufacturer and fraudulently obtained \$915.00. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Richard J. Berning did, from October 26, 2005, through April 27, 2006, with purpose to deprive, knowingly obtain or exert control over money, the property of Aventis, by deception, to wit: Richard J. Berning created false prescriptions and sent them to Aventis to obtain rebate money for sales that did not exist. Richard J. Berning sent thirty-eight rebate requests to this drug manufacturer and fraudulently obtained \$730.00. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (5) Richard J. Berning did, from October 3, 2005, through December 12, 2005, engage in conduct which, if successful, would have constituted a theft. Specifically, Richard J. Berning did, with purpose to deprive, knowingly attempt to obtain or exert control over money, the property of Schering Plough, by deception, to wit: Richard J. Berning created false prescriptions and sent them to Schering Plough in an attempt to obtain rebate money for sales that did not exist. Richard J. Berning sent fourteen rebate requests

to this drug manufacturer, yet his conduct was discovered before he was given money. Such conduct is in violation of Section 2923.02 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (5) of the Findings of Fact constitute being guilty of gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) 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.
- (3) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Richard J. Berning as follows:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends for one year the pharmacist identification card, No. 03-3-11901, held by Richard J. Berning and such suspension is effective as of the date of the mailing of this Order.
 - (1) Richard J. Berning, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
 - (2) Richard J. Berning, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.
- (B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of one thousand dollars (\$1,000.00) on Richard J. Berning and payment of the monetary penalty is due and owing within thirty days of the mailing of this Order. The remittance should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.
- (C) Beginning one year from the effective date of this Order, the State Board of Pharmacy places Richard J. Berning on probation for five years. The terms of probation are as follows:
 - (1) The State Board of Pharmacy hereby declares that Richard J. Berning'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) Richard J. Berning may not serve as a responsible pharmacist.
- (3) Richard J. Berning must not violate the drug laws of Ohio, any other state, or the federal government.
- (4) Richard J. Berning must abide by the rules of the State Board of Pharmacy.
- (5) Richard J. Berning must comply with the terms of this Order.
- (6) Richard J. Berning's license is deemed not in good standing until successful completion of the probationary period.
- (7) Any violation of probation may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.

Richard J. Berning 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.

Mrs. Gregg seconded the motion and it was approved by the Board: *Aye – 6/Nay – 2.*

3:37 p.m. The Board recessed for the day.

WEDNESDAY, MARCH 7, 2007

9:30 a.m. The Ohio State Board of Pharmacy convened in Room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

James E. Turner, R.Ph., *President*; Gregory Braylock, R.Ph., *Vice-President*; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

R-2007-153 After discussion, Mrs. Gregg moved that the minutes of February 5 – 7, 2007, be approved as amended. The motion was seconded by Mr. Braylock and approved by the Board: *Aye – 8.*

R-2007-154 The Board considered a request for an exemption from Ohio Administrative Code Rule 4729-5-10 (Prescription Pick-up Stations) received from:

Omnicare Pharmacy of Wadsworth (TD 02-1438000) Avon, Ohio.
Guadalupe Home (TD pending)

After discussion, Mrs. Gregg moved that the Board approve the request: The motion was seconded by Mr. Giacalone and approved by the Board: *Aye – 8.*

R-2007-155 Mrs. Gregg moved that Mr. Braylock be sent as the Board's representative to the annual School on Alcoholism and Other Drug Dependencies at the University of Utah. The motion was seconded by Ms. Pasquale and approved by the Board: *Aye – 8.*

10:05 a.m. Mrs. Gregg 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 purpose of discussing personnel matters pursuant to Section 121.22(G)(1) of the Ohio Revised Code. Mr. Mitchell

seconded the motion and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

- 10:35 a.m. The Executive Session ended and the Board recessed briefly.
- 10:46 a.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Michael Esber**, R.Ph., (03-1-13497) Louisville, Ohio.
- 12:04 p.m. The hearing ended and the Board recessed briefly.
- 12:09 p.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Mitchell and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.
- 12:15 p.m. The Executive Session ended and the meeting was opened to the public.
- R-2007-156** Mr. Braylock moved that the Board adopt the following order in the matter of **Michael Esber**, R.Ph., (03-1-13497) Louisville, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-060724-002

in the matter of:

MICHAEL J. ESBER, R.PH.
Marion Correctional Institution
Inmate #A520860
940 Marion-Williamsport Road
Marion, Ohio 43302

R.Ph. Number 03-1-13497

INTRODUCTION

The matter of Michael J. Esber came for hearing on March 7, 2007, before the following members of the Board: James E. Turner, R.Ph. (*presiding*); Gregory Braylock, R.Ph.; Suzanne R. Eastman, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; and Dorothy S. Teater, Public Member.

Michael J. Esber was not present but was represented by John P. Alexander, Jr. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: David Gallagher, Ohio State Board of Pharmacy

Respondent's Witnesses: None

State's Exhibits:

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [07-24-06]

- 1A-1B. Procedurals
- 1C. Addendum Notice [08-22-06]
- 1D.-1G. Procedurals
- 1H. Addendum Notice [01-11-07]
- 1I. Procedural
- 2. State Board of Pharmacy Order in re Michael J. Esber, R.Ph. [07-16-01]
- 3. State Board of Pharmacy Order in re Michael J. Esber, R.Ph. [03-11-04]
- 4. Letter of Explanation of Michael J. Esber [07-17-06]
- 5. Rite Aid 2103 E Tuscarawas Customer History Report for Carl Esber [01-01-03 to 07-25-06]
- 6. Rite Aid 2103 E Tuscarawas Customer History Report (Sealed Record) [01-01-03 to 07-25-06]
- 7. Rite Aid 2103 E Tuscarawas Customer History Report for Michael J. Esber [01-01-03 to 07-25-06]
- 8. Rx #0379159 [01-27-06]
- 9. Rx #0384407 [03-23-06]
- 10. Rx #0385633 [04-06-06]
- 11. Rx #0387596 [04-27-06]
- 12. Rite Aid Pharmacy Prescription Register [12-10-05 to 12-10-05]
- 13. Rite Aid Pharmacy Prescription Register [01-27-06 to 01-27-06]
- 14. Rite Aid Pharmacy Prescription Register [03-23-06 to 03-23-06]
- 15. Rite Aid Pharmacy Prescription Register [04-06-06 to 04-06-06]
- 16. Rite Aid Pharmacy Prescription Register [04-08-06 to 04-08-06]
- 17. Rite Aid Pharmacy Prescription Register [04-20-06 to 04-20-06]
- 18. Rite Aid Pharmacy Prescription Register [04-27-06 to 04-27-06]
- 19. Letter of Statement of Jack Blaker [07-18-06]
- 20. Rite Aid 2103 E Tuscarawas Customer History Report (Sealed Record) [01-01-03 to 07-25-06]
- 21. Rite Aid Computer Generated Insurance billing for Rx # 02387 0375019 [12-10-05]
- 22. Rite Aid Computer Generated Insurance billing for Rx # 02387 0379159 [01-27-06]
- 23. Rite Aid Computer Generated Insurance billing for Rx # 02387 0385825 [04-08-06]
- 24. Rite Aid Computer Generated Insurance billing for Rx # 02387 0386963 [04-20-06]
- 25. Rite Aid Computer Generated Insurance billing for Rx # 02387 0384407 [03-23-06]
- 26. Rite Aid Computer Generated Insurance billing for Rx # 02387 0385633 [04-06-06]
- 27. Rite Aid Computer Generated Insurance billing for Rx # 02387 0387596 [04-27-06]
- 28. Notarized Statement of Ignatius Russo, DDS [07-27-06]
- 29. Notarized Statement of Joe L. Carpenter, DMD [07-28-06]
- 30. Grand Jury Witness Subpoena Issued to Center for Oral & Maxillofacial Surgery [08-09-06]
- 31. Notarized Statement of David Mallamaci, M.D. [07-31-06]
- 32. Notarized Statement of Jose Casanova, M.D. [08-07-06]
- 33. Drug Audit Accountability Statement for hydrocodone/APAP 7.5/750 mg at Rite Aid Pharmacy #2387 [05-01-05 to 07-17-06]
- 34. Journal Entry Sentencing Form, State of Ohio vs. Michael J. Esber, Case No. 2006CR1481, Stark County Common Pleas Court [12-20-06]; Prison Sentence Imposed [12-20-06]

Respondent's Exhibits

- A. Letter from Michael J. Esber [not dated]
- B-R. Seventeen letters of character reference [10-08-06 to 11-17-06]

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Michael J. Esber was originally licensed by the State of Ohio as a pharmacist on February 26, 1980, pursuant to examination and that his license was summarily suspended on July 24, 2006. Records further reflect during the relevant time periods stated herein, Michael J. Esber was the Responsible Pharmacist at Rite Aid Discount Pharmacy #2387, 2103 East Tuscarawas Avenue, Canton, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code. Further, Michael J. Esber was previously disciplined by the Board on July 16, 2001, and again on March 11, 2004.
- (2) Michael J. Esber did, from May, 2005, through July 15, 2006, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Rite Aid Discount Pharmacy #2387, beyond the express or implied consent of the owner, to wit: Michael J. Esber admittedly stole approximately 320 tablets of hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance, each month for the purpose of trafficking the drugs. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (3) Michael J. Esber did, from May, 2005, through July 15, 2006, knowingly sell or offer to sell a controlled substance in an amount greater than 50 times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Michael J. Esber admittedly sold, without prescriptions, an amount in excess of 3,800 tablets of hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance. Michael J. Esber admitted that he sold small quantities each time, and Michael J. Esber admitted to altering pharmacy records, so as to avoid detection. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (4) Michael J. Esber did, on or about December 10, 2005, intentionally create and/or knowingly possess a false or forged prescription, to wit: Michael J. Esber created Rx #375019 and kept it on file in the pharmacy to cover for his thefts and trafficking of the drug, hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (5) Michael J. Esber did, on or about January 27, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Michael J. Esber created Rx #379159 and kept it on file in the pharmacy to cover for his thefts and trafficking of the drug, hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (6) Michael J. Esber did, on or about March 23, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Michael J. Esber altered Rx #384407 and kept it on file in the pharmacy to cover for his thefts and trafficking of the drug, hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

- (7) Michael J. Esber did, on or about April 6, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Michael J. Esber altered Rx #385633 and kept it on file in the pharmacy to cover for his thefts and trafficking of the drug, Percocet 5/325 mg, a Schedule II controlled substance. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (8) Michael J. Esber did, on or about April 8, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Michael J. Esber created Rx #385825 and kept it on file in the pharmacy to cover for his thefts and trafficking of the drug, hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (9) Michael J. Esber did, on or about April 20, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Michael J. Esber created Rx #386963 and kept it on file in the pharmacy to cover for his thefts and trafficking of the drug, hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (10) Michael J. Esber did, on or about April 27, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Michael J. Esber altered Rx #387596 and kept it on file in the pharmacy to cover for his thefts and trafficking of the drug, Percocet 5/325 mg, a Schedule II controlled substance. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (11) On or about December 20, 2006, Michael J. Esber pled guilty to one (1) count of Trafficking in Drugs, a felony of the second degree, under Section 2925.03 (A)(1) (C)(2) (e) of the Ohio Revised Code; one (1) count of Theft of Drugs, a felony of the fourth degree under Section 2913.02 (A)(2) and/or (A)(3) of the Ohio Revised Code; two (2) counts of Illegal Processing of Drug Documents, felonies of the fourth degree under Section 2925.23 (A) and/or (B)(1) (F)(1) of the Ohio Revised Code; and, five (5) counts of Illegal Processing of Drug Documents, felonies of the fifth degree under Section 2925.23 (A) and/or (B)(1) (F)(2) of the Ohio Revised Code. State of Ohio vs. Michael J. Esber, Case No. 2006CR1481, Stark County Common Pleas Court. Michael J. Esber was sentenced to a total of two years in prison.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (11) of the Findings of Fact constitute being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraphs (2) through (11) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (3) The State Board of Pharmacy concludes that paragraphs (3) through (11) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Michael J. Esber on July 24, 2006.

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-13497, held by Michael J. Esber effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-13497, held by Michael J. Esber effective as of the date of the mailing of this Order.
- (C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-13497, held by Michael J. Esber effective as of the date of the mailing of this Order.

Pursuant to Section 4729.16(B) of the Ohio Revised Code, Michael J. Esber must return his identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

Mrs. Gregg seconded the motion and it was approved by the Board: Aye – 8.

12:20 p.m. Mr. Mitchell moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Lipsyc and a roll-call vote was conducted by President Turner as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Pasquale – yes; and Teater – yes.

12:47 p.m. The Executive Session ended and the meeting was opened to the public.

12:47 p.m. Mr. Braylock moved that the Board receive Per Diem as follows:

PER DIEM	03/05	03/06	03/07	Total
Braylock	1	1	1	3
Eastman	1	1	1	3
Giacalone	1	1	1	3
Gregg	1	1	1	3
Lipsyc	1	1	1	3
Mitchell	-	1	1	2
Pasquale	1	1	1	3
Teater	1	1	1	3
Turner	1	1	1	3

The motion was seconded by Mrs. Gregg and approved by the Board: Aye – 8.

12:48 p.m. Mr. Lipsyc moved that the meeting be adjourned. The motion was seconded by Mrs. Teater and approved by the Board: Aye – 8.

The Ohio State Board of Pharmacy

approved these Minutes April 10, 2007