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Minutes of the December 3-4, 2007 Meeting of the Ohio State Board of Pharmacy

Monday, December 3, 2007

11:08 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:

Gregory Braylock, R.Ph., *President*; Elizabeth I. Gregg, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; James E. Turner, R.Ph.; and Jerome J. Wiesenahn, R.Ph.

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

11:09 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. Wiesenahn and a roll-call vote was conducted by President Braylock as follows: Gregg – *yes*; Mitchell – *yes*; Pasquale – *yes*; Turner – *yes*; and Wiesenahn – *yes*.

11:13 a.m. Board Member Richard Kolezynski arrived and joined the meeting in progress.

11:32 a.m. The Executive Session ended and the meeting was opened to the public.

R-2008-082 Mr. Turner moved that the continuance request in the matter of **Curt Robert Evans** R.Ph., (03-1-12331), of Jackson, Ohio be approved. The motion was seconded by Mr. Mitchell and approved by the Board: *Aye* – 5. Mr. Kolezynski recused himself from this vote.

R-2008-083 Mr. Turner moved that a resolution to withdraw a citation issued to **Nickolaus P. MacDonald**, R.Ph., (03-3-25882), of Hamilton, Ohio on February 13, 2007, be granted, pursuant to the agreement of the parties involved. The motion was seconded by Mrs. Gregg and approved by the Board: *Aye* – 6.

Board Member Nathan Lipsyc arrived and joined the meeting in progress.

Executive Director William Winsley presented the Legislative report to the Board.

Assistant Executive Director Timothy Benedict presented the **Parata** (electronic dispensing system) report to the Board concerning inspection of a Columbus, Ohio area Wal-Mart. It was approved along with five additional locations.

12:16 p.m. The Board recessed for lunch.

- 1:29 p.m. The meeting reconvened with all members present, Board Member Dorothy Teater having arrived during the break.
- 1:30 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 **Mark Christopher Carrington**, R.Ph., (03-1-22586), of McDermott, Ohio.
- 2:26 p.m. The hearing ended and the record was closed.
- 2:27 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 Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Pasquale – *yes*; Turner – *yes*; Teater – *yes*; and Wiesenhahn – *yes*.
- 2:38 p.m. The Executive session ended and the meeting was opened to the public.

R-2008-084 Mrs. Gregg moved that the Board adopt the following order in the matter of **Mark Christopher Carrington**, R.Ph., (03-1-22586), of McDermott, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-061207-015

in the matter of:

MARK CHRISTOPHER CARRINGTON R.Ph.

3684 McDermott Pond Creek Road
McDermott, Ohio 45652

R.Ph. Number 03-1-22586

INTRODUCTION

The matter of Mark Christopher Carrington came for hearing on December 3, 2007, before the following members of the Board: Gregory Braylock, R.Ph. (*presiding*); Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; Dorothy S. Teater, Public Member; James E. Turner, R.Ph.; and Jerome J. Wiesenhahn, R.Ph.

Mark Christopher Carrington was not represented by Counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses: Kevin J. Kinneer, Ohio State Board of Pharmacy
Mark Christopher Carrington, R.Ph., Respondent

Respondent's Witnesses: None

State's Exhibits:

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [12-07-06]
1A-1E. Procedurals
2. Notarized Statement of Mark Carrington [12-06-06]
3. Northwest Toxicology Drug Screen Report [11-16-06]

4. Seven Drug Accountability Statements at Rite Aid Pharmacy #1897 for hydrocodone/APAP 7.5/325 mg, hydrocodone/APAP 7.5/750 mg, hydrocodone/APAP 5/500 mg, hydrocodone/APAP 7.5/650 mg, Vicodin ES 7.5/750 mg, Norco 10/325 mg, Ambien 10 mg [12-12-06]
5. State Board of Pharmacy Order In Re Mark Christopher Carrington [09-19-05]
6. State Board of Pharmacy Order In Re Mark Christopher Carrington [04-07-06]
7. Docket Sheet, State of Ohio vs. Mark Christopher Carrington, Case No. 04CR001236, Scioto County Common Pleas Court [11-15-04 to 10-15-07]
8. Indictment, State of Ohio vs. Mark C. Carrington, Case No. 07CR048, Scioto County Common Pleas Court [01-19-07]; Judgment Entry [05-09-07]

Respondent's Exhibits:

- A1. Letter from Russell A. Hopper, CADC to Michael D. Quigley, R.Ph. [03-20-07]
- A2. Drug Screen Results [03-13-06 to 11-09-07]
- A3. Support Group Attendance Records [09-06-07 to 11-30-07]

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 Mark Christopher Carrington was originally licensed by the State of Ohio as a pharmacist on July 24, 1997, pursuant to examination, and that his license to practice pharmacy in Ohio was summarily suspended effective December 7, 2006. Records further reflect that Mark Christopher Carrington was previously suspended on September 19, 2005 and his license was reinstated on April 21, 2006.
- (2) Mark Christopher Carrington is addicted to the use of controlled substances, to wit: Mark Christopher Carrington has admitted to a Board Agent that he has an active addiction and he has tested positive for opiates and barbiturates. Such conduct indicates that Mark Christopher Carrington falls within the ambit of Sections 3719.121 and 4729.16(A)(3) of the Ohio Revised Code.
- (3) Mark Christopher Carrington did, on or about the following date, violate his Board-imposed probation, to wit: Mark Christopher Carrington tested positive for opiates and barbiturates on November 16, 2006.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes being guilty of gross immorality, and indicates a violation of Mark Christopher Carrington's probation in the practice of pharmacy as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes being guilty of dishonesty and unprofessional conduct, and indicates a violation of Mark Christopher Carrington's probation 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, and indicates a violation of Mark Christopher Carrington's probation as provided in Division (A)(3) 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 Mark Christopher Carrington on December 7, 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 adjudicates the matter of Mark Christopher Carrington as follows:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-22586, held by Mark Christopher Carrington 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, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-22586, held by Mark Christopher Carrington 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, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-22586, held by Mark Christopher Carrington effective as of the date of the mailing of this Order.

Pursuant to Section 4729.16(B) of the Ohio Revised Code, Mark Christopher Carrington 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.

The motion was seconded by Mr. Turner and approved by the Board: *Aye* – 8.

2:40 p.m. The Board recessed briefly.

3:00 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 **Nicholas Matthew Taflan**, R.Ph. (03-3-12662), of Bellaire, Ohio.

4:05 p.m. The hearing ended and the record was closed.

4:06 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 Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Pasquale – *yes*; Turner – *yes*; Teater – *yes*; and Wiesenbahn – *yes*.

4:14 p.m. The Executive Session ended and the meeting was opened to the public.

4:15 p.m.
R-2008-085

Mr. Kolezynski moved that the Board adopt the following order in the matter of **Nicholas Matthew Taflan**, R.Ph. (03-3-12662), of Bellaire, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-070809-007

in the matter of:

NICHOLAS MATTHEW TAFLAN, R.Ph.

55951 Key-Bellaire Road
Bellaire, Ohio 43906

R.Ph. Number 03-3-12662

INTRODUCTION

The matter of Nicholas Matthew Taflan came for hearing on December 3, 2007, before the following members of the Board: Gregory Braylock, R.Ph. (*presiding*); Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; Dorothy S. Teater, Public Member; James E. Turner, R.Ph.; and Jerome J. Wiesenbahn, R.Ph.

Nicholas Matthew Taflan was not represented by counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses: William L. Padgett, Ohio State Board of Pharmacy
Nicholas Matthew Taflan, R.Ph., Respondent

Respondent's Witnesses: Patricia Louise Taflan
Loren Travis Ricer, R.Ph.
Antonio Nieves, R.Ph.
Nicholas Matthew Taflan, II

State's Exhibits:

1. Notice of Opportunity For Hearing letter [08-09-07]
1A-1D. Procedurals
2. Renewal Application for Pharmacist License of Nicholas Matthew Taflan [08-11-06]
3. Indictment, State of Ohio v. Nicholas Matthew Taflan, Case No. 2:06CR066, United States District Court for the Southern District of Ohio Eastern Division [03-09-06]; Judgment in a Criminal Case [10-04-06]

Respondent's Exhibits:

- A. Statement of Nicholas T. Taflan, R.Ph. [not dated]
- B. Seventeen Letters of Support [04-09-06 to 12-03-07]
- C1. Payment Schedule for Court-Ordered Monetary Penalties [04-11-07]
- C2. Department of Justice Notice of Lien [12-27-06]
- C3. Records of Restitution Compliance [11-20-06 to 11-02-07]
- D1. Department of the Treasury - Internal Revenue Service Installment Agreement [06-25-07]

- D2. Department of the Treasury - Internal Revenue Service Certificate of Release of Federal Tax Lien [04-18-07]
- D3. Compliance Update for Federal Taxes [05-08-06 to 11-02-07]
- E1. Office of Ohio Attorney General Payment Agreement [03-24-07]
- E2. Compliance Update for State Taxes [05-17-06 to 11-16-07]

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 Nicholas Matthew Taflan was originally licensed by the State of Ohio as a pharmacist on September 27, 1978, pursuant to reciprocity, and is currently licensed to practice pharmacy in the State of Ohio.
- (2) Nicholas Matthew Taflan was convicted in the United States District Court, Southern District of Ohio, of Income Tax Evasion in violation of Title 26: Section 7201, United States of America v. Nicholas Matthew Taflan, Case No. CR2-06-066, United States District Court, Southern District of Ohio (Eastern Division). Nicholas Matthew Taflan was placed on house arrest and a period of probation, and he was ordered to pay \$44,840.00 to the United States Government.

CONCLUSION OF LAW

The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of a felony and gross immorality as provided in Division (A)(1) 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 Nicholas Matthew Taflan 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. 03-3-12662, held by Nicholas Matthew Taflan effective as of the date of the mailing of this Order. Further, the Board stays the suspension and places Nicholas Matthew Taflan on probation for three years with the following conditions:
 - (1) The State Board of Pharmacy hereby declares that Nicholas Matthew Taflan'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) Nicholas Matthew Taflan may not serve as a responsible pharmacist.
 - (3) Nicholas Matthew Taflan must not violate the drug laws of Ohio, any other state, or the federal government.
 - (4) Nicholas Matthew Taflan must abide by the rules of the State Board of Pharmacy.

- (5) Nicholas Matthew Taflan must comply with the terms of this Order.
- (6) Nicholas Matthew Taflan'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.

Nicholas Matthew Taflan 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.

Ms. Pasquale seconded the motion and it was approved by the Board: *Aye* – 8.

4:16 p.m. The Board recessed for the day.

Tuesday, December 4, 2007

8:04 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:

Gregory Braylock, R.Ph., *President*; Nathan S. Lipsyc, R.Ph., *Vice-President*; Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; Dorothy S. Teater, Public Member; James E. Turner, R.Ph.; and Jerome J. Wiesenbahn, R.Ph.

Mr. Braylock said there was no meeting of the Nursing Board's Committee on Prescriptive Governance this month.

Mr. Benedict discussed the Medical Board's Prescribing Committee report concerning a possible re-drafting of Rule 4731-11-04.

R-2008-086 The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-11 (Responsible person) requesting that **Lorne Roby**, R.Ph. (03-1-24742), of Perrysburg, Ohio be permitted to serve as the responsible person for the following sites:

Active Infusion; Toledo, Ohio (02-1178200)

Active Infusion; Tallmadge, Ohio (02-1773500)

After discussion, Mrs. Gregg moved that the Board approve the request for 60 days. The motion was seconded by Mr. Turner and approved by the Board: *Aye* – 8.

R-2008-087 The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-11 (Responsible person) requesting that **David R. Baker**, R.Ph. (03-1-22567), of Concord, Ohio be permitted to be the responsible person for the following sites:

Rite Aid; Madison, Ohio (02-1014150)

Rite Aid; Mentor, Ohio (02-0184350)

After discussion, Mr. Turner moved that the Board approve the request for 60 days. The motion was seconded by Mr. Lipsyc and approved by the Board: *Aye* – 8.

R-2008-088

The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-11 (Responsible person) requesting that **Jim Zeleznik**, R.Ph. (03-2-15309), of Berlin Center, Ohio be permitted to be the responsible person for the following sites:

Rite Aid; Beachwood, Ohio (02-0169000)
Rite Aid; Warren, Ohio (02-0590400)

After discussion, Mrs. Gregg moved that the Board approve the request for 60 days. The motion was seconded by Mr. Kolezynski and approved by the Board: *Aye* – 8.

R-2008-089

Mr. Benedict and Mr. McMillen then presented a request from Giant Eagle's Central Processing Center that it be allowed to function as a central-fill pharmacy in Ohio. After discussion, Mrs. Gregg moved that the Board find the Giant Eagle Central-Fill Pharmacy to be approvable pending final inspection that showed compliance with the applicable Board rules. The motion was seconded by Mr. Wiesenbahn and approved by the Board: *Aye* – 8.

R-2008-090

The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-11 (Responsible person) requesting that **Mark Pellegrino**, R.Ph. (03-2-23461), of Bellville, Ohio be permitted to be the responsible person for the following sites:

Select Specialty Hospital; Wabash Avenue, Akron, Ohio (02-0946550)
Select Specialty Hospital; E. Market Street, Akron, Ohio (02-1199800)

After discussion, Mr. Turner moved that the Board approve the request for 60 days. The motion was seconded by Ms. Pasquale and approved by the Board: *Aye* – 8.

R-2008-091

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; Willoughby, Ohio (02-1235150)
Various Physician Offices on the letter or 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. Mitchell and approved by the Board: *Aye* – 8.

R-2008-092

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

RC Compounding Services, LLC; Poland, Ohio (02-1678950)
Doctor's Pain Clinic; Youngstown, Ohio (02-1774850)

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. Kolezynski and approved by the Board: *Aye* – 8.

R-2008-093

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:

Central Admixture Pharmacy Services; Valley View, Ohio (02-1312700)
Independence/Broadview Heights Family Health Center;
Broadview, Ohio (02-1634900)

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* – 8.

Mr. Mitchell reported that the Medical Board's Physician Assistant Policy Committee did not meet.

Mrs. Droz updated the Board on the Prescription Drug Monitoring Program.

Mr. Kolezynski and Mr. Benedict discussed the Probation Report with the Board.

9:39 a.m. The Board recessed briefly.

9:49 a.m.

R-2008-094

After discussion, Mrs. Gregg moved that the Board minutes of November 5-6, 2007, be approved as amended. Mr. Lipsyc seconded the motion and it was approved by the Board: *Aye* – 8.

10:08 a.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of discussing personnel matters 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 Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Pasquale – *yes*; Turner – *yes*; Teater – *yes*; and Wiesenbahn – *yes*.

10:25 a.m. The Executive Session ended and the meeting was opened to the public.

10:35 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 **Hemin Hasmukh Patel**, R.Ph. (03-1-26038), of Hilliard, Ohio.

12:02 p.m. The hearing in the matter of **Hemin Hasmukh Patel**, R.Ph. (03-1-26038), of Hilliard, Ohio was recessed.

The Board recessed for lunch.

1:02 p.m. Mrs. Gregg moved that the Board go into Executive Session for the purpose of discussing personnel matters pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Turner and a roll-call vote was conducted by President Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Pasquale – *yes*; Turner – *yes*; Teater – *yes*; and Wiesenbahn – *yes*.

1:25 p.m. The Executive Session ended and the meeting was opened to the public.

1:30 p.m.

R-2008-095

The following candidates for licensure by reciprocity met in room South A, 31st Floor of the Vern Riffe Center. They introduced themselves and participated in a discussion of pharmacy laws and rules with Mr. McMillen and members of the Board. They were then presented their pharmacist identification cards.

Theresa Delali Ankamah	03-2-28378	New York
Tiffany Kay Brockett	03-2-28339	Michigan
John Thomas Emmons	03-2-28392	Kentucky
Nancy Lee Green-Knepper	03-2-28389	North Carolina
ALyssa Jeanne Hoover	03-2-28404	Wisconsin
Charla Evans Katz	03-2-28373	Kentucky
Carrie J. Lovell	03-2-28395	Kentucky
Alesha Elizabeth Martin	03-2-28393	Kentucky
Lesley Ann Miller	03-2-28381	Tennessee
Bich Ngoc Nguyen	03-2-28402	Illinois
Mehulbhai J. Patel	03-2-28398	New Jersey
Andrew Starrett Rudd	03-2-28374	Kentucky
Cynthia M. Shuck	03-2-28357	Kentucky
Laura C. White	03-2-28375	Alabama
Jennifer Jae Yoon Oh	03-2-28388	Kentucky

- 1:47 p.m. The Board reconvened in Room East B, 31st Floor of the Vern Riffe Center. The hearing in the matter of **Hemin Hasmukh Patel**, R.Ph. (03-1-26038), of Hilliard, Ohio continued.
- 3:01 p.m. The hearing ended and the record was closed.
- 3:08 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. Wiesenhahn and a roll-call vote was conducted by President Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Pasquale – *yes*; Turner – *yes*; Teater – *yes*; and Wiesenhahn – *yes*.
- 3:28 p.m. The Executive Session ended and the meeting was opened to the public.
- R-2008-096** Mr. Wiesenhahn moved that the Board adopt the following order in the matter of **Hemin Hasmukh Patel**, R.Ph. (03-1-26038), of Hilliard, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-070809-004

in the matter of:

HEMIN HASMUKH PATEL, R.Ph.

6324 Carriann Court
Hilliard, Ohio 43026

R.Ph. Number 03-1-26038

INTRODUCTION

The matter of Hemin Hasmukh Patel came for hearing on December 4, 2007, before the following members of the Board: Gregory Braylock, R.Ph. (*presiding*); Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; Dorothy S. Teater, Public Member; James E. Turner, R.Ph.; and Jerome J. Wiesenhahn, R.Ph.

Hemin Hasmukh Patel was represented by Douglas E. Graff. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: Christopher K. Reed, Ohio State Board of Pharmacy

Respondent's Witness: Hemin Hasmukh Patel, R.Ph., Respondent

State's Exhibits:

1. Notice of Opportunity For Hearing letter [08-09-07]
- 1A-1D. Procedurals
2. Wal-Mart Investigation Report [12-14-04]
3. Statement of Hemin Patel [11-30-04]
4. Wal-Mart Stores, Inc. Restitution Note [11-30-04]
5. Notarized Statement of Nishit Jhaveri, M.D. [03-09-05]
6. Notarized Statement of Janelle Whitney [05-05-05]
7. Patient Medical Expenses Report at Kroger Pharmacy 01600598 for Hasmukh Patel [12-13-04 to 01-08-05]
8. Rx #6692706 [12-13-04]
9. Rx #6695252 [01-08-05]

10. Patient Medical Expenses Report at Kroger Pharmacy 01600598 for Hasmukh Patel [01-07-05]
11. Rx #6695189 [01-07-05]
12. Patient Medical Expenses Report at Kroger Pharmacy 01600598 for Pushpa Patel [12-13-04 to 01-08-05]
13. Rx #6692820 [12-13-04]
14. Rx #6694810 [01-08-05]
15. Patient Medical Expenses Report at Kroger Pharmacy 01600598 for Sweetu Patel [11-24-04 to 01-08-05]
16. Rx #6695201 [01-08-05]
17. Rx #6695251 [01-08-05]
18. Kroger Restitution and Resignation Agreement [02-22-05]

Respondent's Exhibits:

- A. Ohio State Board of Pharmacy Notice of Opportunity For Hearing letter [08-09-07]
- B. Resume of Hemin H. Patel
- C. Pharmacy Licensure Letters from the Ohio State Board of Pharmacy and the New Jersey Board of Pharmacy [11-17-03 and 02-26-04]; National Association of Boards of Pharmacy Foreign Pharmacy Graduate Equivalency Examination Report [11-05-02]; Test of Spoken English Record for October 2002; Test of English as a Foreign Language Record [12-20-02]; New Jersey Notary Public Commission and Certificate [02-25-04 and 04-22-04]
- D. Statement of Hemin Patel [11-30-04]; Wal-Mart Stores, Inc. Restitution Note [11-30-04]; Restitution Documentation [06-26-06]
- E. Kroger Loss Prevention Receipt No. 4673 in re Hemin Patel [04-20-05]
- F. Ohio Health Staff Performance Evaluations for Hemin Patel [07-11-06 to 08-07-07]
- G. The Ohio State University Non-Traditional Doctor of Pharmacy Program Documentation in re Hemin Patel [11-04-02 to 11-09-07]
- H. The Ohio State University Clinical Evaluations of Hemin Patel for June 2006 to October 2007
- I. Two letters from William F. McMillen, R.Ph. to Hemin Patel [May 9, 2007 and 07-13-07]; Continuing Pharmaceutical Education Credits and Certificates [05-09-04 to 10-13-07]
- J. Six letters of support [10-20-06 to 11-17-07]

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 Hemin Hasmukh Patel was originally licensed by the State of Ohio as a pharmacist on February 26, 2004, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio.
- (2) Hemin Hasmukh Patel did, from April 4, 2004, through November 30, 2004, with purpose to deprive, knowingly obtain or exert control over the property of Wal-Mart by deception, to wit: while employed to practice pharmacy, Hemin Hasmukh Patel admittedly stole gift cards, merchandise, and long-distance telephone time. Hemin Hasmukh Patel originally signed a promissory note to repay \$10,000.00, but it was later amended to

\$3,500.00. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (3) Hemin Hasmukh Patel did, from December 13, 2004, through January 8, 2005, intentionally create and/or knowingly possess false or forged prescriptions, to wit: Hemin Hasmukh Patel created the following prescriptions without authorization from a prescriber, and he maintained them on file at Kroger Pharmacy:

<u>Date</u>	<u>Rx #</u>	<u>Drug</u>	<u>Qty.</u>
12-13-04	6692706	Cozaar 50 mg	120
01-07-05	6695189	Viagra 100 mg	8
01-08-05	6695252	Niaspan ER 1,000 mg	100
01-08-05	6694810	TriNessa-28	56
12-13-04	6692820	Cozaar 50 mg	30
01-08-05	6695201	Ortho-Tri-Cyclen	56
01-08-05	6695251	Cozaar 50 mg	180

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

- (4) Hemin Hasmukh Patel did, from December 13, 2004, through January 8, 2005, with purpose to deprive, knowingly obtain or exert control over the property of Kroger Pharmacy by deception, to wit: while employed to practice pharmacy, Hemin Hasmukh Patel forged prescriptions for family members and billed various insurance companies in the amount of \$845.03, forcing Kroger to make restitution to PCS, PAID, and Medicaid for payment improperly made. 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 paragraphs (2) through (4) 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 (4) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (3) The State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

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 Hemin Hasmukh Patel 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 five years the pharmacist identification card, No. 03-1-26038, held by Hemin Hasmukh Patel and such suspension is effective as of the date of the mailing of this Order. Further, the Board stays four years of the suspension.

- (1) Hemin Hasmukh Patel, 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) Hemin Hasmukh Patel, 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 Hemin Hasmukh Patel 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 Hemin Hasmukh Patel on probation for four years effective upon reinstatement of his identification card. The terms of probation are as follows:
- (1) Hemin Hasmukh Patel must obtain, within six months from the effective date of this Order, three hours (0.3 CEUs) of Board approved continuing pharmacy education in Jurisprudence, which may not also be used for license renewal.
 - (2) The State Board of Pharmacy hereby declares that Hemin Hasmukh Patel'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.
 - (3) Hemin Hasmukh Patel may not serve as a responsible pharmacist.
 - (4) Hemin Hasmukh Patel must not violate the drug laws of Ohio, any other state, or the federal government.
 - (5) Hemin Hasmukh Patel must abide by the rules of the State Board of Pharmacy.
 - (6) Hemin Hasmukh Patel must comply with the terms of this Order.
 - (7) Hemin Hasmukh Patel's license is deemed to be not in good standing until successful completion of the probationary period.

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.

On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby limits Hemin Hasmukh Patel's practice of pharmacy in that he may not dispense prescriptions for himself or for any member of his family.

Hemin Hasmukh Patel 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.

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

3:30 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. Lipsyc and a roll-call vote was conducted by President Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Pasquale – *yes*; Turner – *yes*; Teater – *yes*; and Wiesenhahn – *yes*.

3:41 p.m. The Executive Session ended and the meeting was opened to the public.

3:41 p.m. Mr. Lipsyc moved that the Board receive Per Diem as follows:

<u>PER DIEM</u>	<u>12/03</u>	<u>12/04</u>	<u>Total</u>
Braylock	1	1	2
Gregg	1	1	2
Kolezynski	1	1	2
Lipsyc	1	1	2
Mitchell	1	1	2
Pasquale	1	1	2
Teater	1	1	2
Turner	1	1	2
Wiesenhahn	1	1	2

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

Mrs. Gregg moved that the meeting be adjourned. The motion was seconded by Mr. Lipsyc and approved by the Board: *Aye* – 8.

<p>The Ohio State Board of Pharmacy approved these Minutes January 9, 2008</p>
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