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Ohio State Board of Pharmacy 77 South High Street, Room 1702, Columbus, Ohio 43215-2126
Telephone: 614-466-4143 fax: 614-752-4836 email: exec@bop.ohio.gov

Minutes of the March 5-7, 2012
Meeting of the Ohio State Board of Pharmacy

Monday, March 5, 2012

10:01 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:

Donald M. Casar, R.Ph., *President*; Brian M. Joyce, R.Ph., *Vice-President*; Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph.; Kevin J. Mitchell, R.Ph.; and Michael A. Moné, R.Ph.

Also present were Kyle Parker, *Executive Director*; John Whittington, *Assistant Executive Director*; Mark Keeley, *Legislative Affairs Administrator*; Nancy Little, *Licensing Administrator*; Chris Reed, *Compliance Supervisor*; Danna Droz, *Prescription Drug Monitoring Program Director*; and Tracy Nave, *Assistant Attorney General*.

10:12 a.m. Mr. Joyce moved that the Board recess to executive session in order to consider this quasi-judicial matter in accordance with Chapter 119 of the 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 Ms. Lange and a roll-call vote was conducted by President Casar as follows: Cain – yes; Gahm – yes; Joyce – yes; Kolezynski – yes; Lange – yes; Mitchell – yes; Moné – yes.

11:00 a.m. The executive session ended and the meeting was opened to the public.

R-2012-258 Mr. Casar said that the following Settlement Agreement has been signed and is now effective:

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket Number D-111019-213)

In the Matter of:

GHA PHARMACY
c/o Timothy Dale Burton, R.Ph.
2915 Clifton Avenue
Cincinnati, Ohio 45220
(Terminal Distributor Number 02-1526550)

This Settlement Agreement is entered into by and between GHA Pharmacy 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.

GHA Pharmacy enters into this Agreement being fully informed of its 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, the right to appeal. GHA Pharmacy acknowledges that by entering into this Agreement it has waived its rights under Chapter 119. of the Revised Code.

WHEREAS, the State Board of Pharmacy is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, refuse to renew any license issued to a Terminal Distributor of Dangerous Drugs pursuant to section 4729.54 of the Revised Code, or may impose a monetary penalty on the license holder, for violation of any of the enumerated grounds of Section 4729.57 of the Ohio Revised Code.

WHEREAS, GHA Pharmacy is a licensed Terminal Distributor of Dangerous Drugs in the State of Ohio.

WHEREAS, on or about October 19, 2011, pursuant to Chapter 119. of the Ohio Revised Code, GHA Pharmacy was notified of the allegations or charges against it, its right to a hearing, its rights in such hearing, and its right to submit contentions in writing. Further, a hearing was scheduled and continued by the Board. The October 19, 2011, Notice of Opportunity for Hearing contains the following allegations or charges:

- (1) Records of the Board of Pharmacy indicate that GHA Pharmacy is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs. Records further reflect during the relevant time periods stated herein, Timothy Dale Burton was the Responsible Pharmacist pursuant to Rule 4729-5-11 of the Ohio Administrative Code and Sections 4729.27 and 4729.55 of the Ohio Revised Code.
- (2) GHA Pharmacy did, from on or about October 18, 2010, through February 10, 2011, fail to notify the Ohio State Board of Pharmacy by telephone immediately upon the discovery of the theft or significant loss of dangerous drugs or controlled substances, to wit: pharmacy personnel were aware that there were shortages of controlled substances, and that a pharmacy technician stole the significant amounts of hydrocodone from four different pharmacies, yet did not immediately notify the Board of Pharmacy. Such conduct is in violation of Rule 4729-9-15(A) of the Ohio Administrative Code.

GHA Pharmacy neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated October 19, 2011; 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 a formal hearing at this time, GHA Pharmacy knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) GHA Pharmacy agrees to the imposition of a monetary penalty of three thousand dollars (\$3,000.00) due and owing within thirty days from the effective date of this Agreement. Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed forms to the State

Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

- (B) GHA Pharmacy agrees to adopt and implement the policies as submitted to the Ohio State Board of Pharmacy in its letter dated January 4, 2012. These policies are incorporated into this Agreement as if fully rewritten herein.
- (C) In addition, GHA Pharmacy agrees to require each pharmacist in charge and supervising pharmacist at all GHA Pharmacy locations to obtain, within six months from the effective date of this Agreement, five hours of approved continuing pharmacy education (0.5 CEUs) in Jurisprudence, which may not also be used for license renewal.

GHA Pharmacy acknowledges that it 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.

GHA Pharmacy waives any and all claims or causes of action it 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. GHA Pharmacy waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

This Agreement embodies the entire Agreement between and of the parties. There are no express or implied promises, guarantees, terms, covenants, conditions, or obligations other than those contained herein; and this agreement supersedes all previous communications, representations or agreements, either verbal or written, between the parties.

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

GHA Pharmacy, Respondent c/o Timothy Dale Burton, R.Ph.	signed: 02/09/2012
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Kris M. Dawley, Attorney for Respondent	signed: 02/15/2012
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Donald M. Casar, President, Ohio State Board of Pharmacy	signed: 03/05/2012
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Tracy M. Nave, Ohio Assistant Attorney General	signed: 03/30/2012
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The Board recessed briefly.

11:10 a.m. The meeting resumed.

R-2012-259 Ms. Lange moved that the settlement offer in the matter of John Joseph Perry, R.Ph., Richmond, IN, be denied. The motion was seconded by Mr. Gahm and approved by the Board: *Aye* – 7.

R-2012-260 After discussion, Ms. Lange moved that **Dr. Mark E. Hostettler, M.D of Internal Medicine Physicians**, Alliance, Ohio, be permitted to withdraw his application for a

TDDD License as a pain-management clinic. The motion was seconded by Mr. Kolezynski and approved by the Board: *Aye* – 7.

R-2012-261 After discussion, Mr. Gahm moved that **Dr. Mark E. Hostettler, M.D. of Internal Medicine Physicians**, Canton, Ohio, be permitted to withdraw his application for a TDDD License as a pain-management clinic. The motion was seconded by Mr. Moné and approved by the Board: *Aye* – 7.

R-2012-262 After discussion, Mr. Joyce moved that **Preble County Family Practice – Dr. Robert A. Kominiarek, D.O.**, Eaton, Ohio, be permitted to withdraw his application for a TDDD License as a pain-management clinic. The motion was seconded by Mr. Kolezynski and approved by the Board: *Aye* – 7.

R-2012-263 After discussion, Mr. Joyce moved that **Accu-Med, Akron Inc. – Dr. Michael F. Song, M.D.**, Akron, Ohio, be permitted to withdraw his application for a TDDD License as a pain-management clinic. The motion was seconded by Mr. Gahm and approved by the Board: *Aye* – 6, *Nay* – 1.

R-2012-264 Mr. Gahm moved that a request from **Humana Right Source, Cincinnati, Ohio** for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites: Specialty drugs to multiple prescriber locations (on file) be approved. The motion was seconded by Ms. Lange and approved by the Board: *Aye* - 7

Ms. Lange stated there was no Physician Assistant Formulary Committee report.

Ms. Lange presented the technicians report.

Mr. Gahm presented the Nursing Board Committee on Prescriptive Governance CPG report-H.B.94.

Dr. Whittington presented the Tri-Board meeting recommendation that telemedicine become more common.

Dr. Whittington stated there was no Medical Board Prescribing Committee report.

Mr. Keeley presented the Legislative report.

Mrs. Droz presented the OARRS report.

Ms. Little presented the Licensing update report.

12:45 p.m. The Board recessed for lunch.

2:45 p.m. The Board meeting reconvened.

R-2012-265 Mr. Keeley requested that Michelle Ross be accommodated to receive time and a half and a separate room to sit for the NAPLEX and MPJE. Mr. Joyce moved to approve.

The motion was seconded by Mr. Moné: *Aye* – 7.

2:57 p.m. The Board was joined by Assistant Attorney General Henry Appel to conduct a adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Ryan Michael Griffin**, Intern (06-0-07537) Lancaster, Ohio.

3:00 p.m. The Board went off the record to review the exhibits.

3:10 p.m. The meeting resumed.

4:08 p.m. The hearing ended and the record was closed.

4:10 p.m. Ms. Lange moved that the Board recess to executive session in order to consider this quasi-judicial matter in accordance with Chapter 119. of the Revised Code. The motion was seconded by Mr. Gahm and a roll-call vote was conducted by President Casar as follows: Cain – *yes*; Gahm – *yes*; Joyce – *yes*; Kolezynski– *yes*; Lange – *yes*; Mitchell – *yes*; Moné – *yes*.

4:17 p.m. The Executive Session ended and the meeting was opened to the public.

R-2012-266 After votes were taken in public session, the Board adopted the following order in the matter of **Ryan Michael Griffin**, Intern (06-0-07537) Lancaster, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Docket Number D-110118-161)

In The Matter Of:

RYAN MICHAEL GRIFFIN, INTERN

331 Orchard View Drive

Lancaster, Ohio 43130

(Intern Number 06-0-07537)

INTRODUCTION

The Matter of Ryan Michael Griffin came for hearing on March 5, 2012, before the following members of the Board: Donald M. Casar, R.Ph. (presiding); Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph.; Kevin J. Mitchell, R.Ph.; and Michael A. Moné, R.Ph.

Ryan Michael Griffin was represented by John M. Snider. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness:

None

Respondent's Witnesses:

1. Ryan Michael Griffin, Respondent
2. Jarrod Grossman, Executive Director, PRO
3. Michael Griffin, R.Ph.

State's Exhibits:

1. Copy of reinstatement hearing request letter [06-21-11]
1A-1C. Procedurals
2. Copy of State Board of Pharmacy Order in re: Ryan Michael Griffin [06-15-11]

Respondent's Exhibits:

- A1. Copy of State Board of Pharmacy hearing schedule letter in re: Ryan Michael Griffin, Intern [07-29-11]; State Board of Pharmacy Order in re: Ryan Michael Griffin [06-15-11]
- A2. Letter from Thomas L. Kier, Associate Dean of Operations of Ohio Northern University [02-23-12]
- A3. Ohio Northern University grade transcript through Fall of 2012 in re: Ryan Michael Griffin [02-28-12]
- A4. Shepherd Hill Aftercare compliance letter from Ellen Laubis, M.Ed. LICDC [02-22-12]
- A5. PRO Pharmacist's Recovery Contract for Ryan Griffin [03-15-11]; PRO Pharmacist's Recovery Contract for Ryan Griffin [06-21-11]
- A6. OHPRO-Test History Report for Ryan Griffin [01-01-11 to 02-22-12]
- A6a. FirstLab Result Certificate [02-21-12]
- A7. Copy of prescription with prescription information from Ohio Northern Student Health for Ryan Griffin [08-29-11]
- A8. Letter from James J. Patterson, M.D., Orthopedic Institute of Ohio in re: Ryan Griffin [12-14-11]
- A9. Monthly calendars of support group meetings [March 2011 to February 2012]
- A10. Support group attendance records [03-11-11 to 02-28-12]
- A10a. Support group attendance records [02-02-12 to 03-01-12]
- A11. Restitution documentation from Kroger in re: Ryan Griffin [04-18-11]
- A12. Letter from Elizabeth George, Probation Officer Fairfield County Municipal Court in re: Ryan Griffin [02-29-12]

FINDING 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 that Ryan Michael Griffin has substantially met the terms set forth in the Order of the State Board of Pharmacy, Docket Number D-110118-161, effective June 15, 2011.

DECISION OF THE BOARD

On the basis of the Finding of Fact set forth above, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the reinstatement of the intern identification card, No. 06-0-07537, held by Ryan Michael Griffin.

Further, the Board places Ryan Michael Griffin on probation for the duration of his internship. The terms of probation are as follows:

(A) Ryan Michael Griffin must continue compliance with his current PRO treatment contract dated June 21, 2011, with the following conditions:

- (1) Random, **observed** urine drug screens shall be conducted at least once each month for the first year and then at least once every three months for the remaining four years.
 - (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 urine screen or a diluted urine 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) Ryan Michael Griffin must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10 of each year of probation) that include:
- (1) The written report and documentation provided by the treatment program pursuant to the contract, and
 - (2) A written description of Ryan Michael Griffin's progress towards recovery and what Ryan Michael Griffin has been doing during the previous three months.
- (C) Other terms of probation are as follows:
- (1) Ryan Michael Griffin must abide by the contract with his treatment provider and must immediately report any violation of the contract to the Board.
 - (2) Ryan Michael Griffin must not violate the drug laws of Ohio, any other state, or the federal government.
 - (3) Ryan Michael Griffin must abide by the rules of the State Board of Pharmacy.
 - (4) Ryan Michael Griffin must comply with the terms of this Order.
 - (5) Ryan Michael Griffin's license is deemed not in good standing until successful completion of the probationary period.
- (D) 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.

Ryan Michael Griffin 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.

Troy Gahm moved for Findings of Fact; Michael Moné seconded the motion. Motion was passed (Aye-7/Nay-0).

Troy Gahm moved for Action of the Board; Deborah Lange seconded the motion. Motion passed (Aye-7/Nay-0).

4:20 p.m.

The meeting was recessed for the day.

Tuesday, March 6, 2012

- 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:
- Donald M. Casar, R.Ph., *President*; Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph.; and Kevin J. Mitchell, R.Ph., Michael A. Moné, R.Ph.
- 10:05 a.m.** The Board was joined by Assistant Attorney General Henry Appel to conduct a adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Eric David Rieman**, Proposal to Deny Intern License, Ottawa, Ohio.
- 10:08 a.m.** The Board went off the record to review the exhibits.
- 10:18 a.m.** The meeting resumed.
- 12:25 p.m.** The hearing ended and the record was closed.
- 12:28 p.m.** Ms. Lange moved that the Board recess to executive session in order to consider this quasi-judicial matter in accordance with Chapter 119. of the Revised Code. The motion was seconded by Mr. Mitchell and a roll-call vote was conducted by President Casar as follows: Cain – *yes*; Gahm – *yes*; Kolezynski– *yes*; Lange – *yes*; Mitchell – *yes*; Moné – *yes*.
- 12:44 p.m.** The Executive Session ended and the meeting was opened to the public.
- R-2012-267** After votes were taken in public session, the Board adopted the following order in the matter of **Eric David Rieman**, Proposal to Deny Intern License, Ottawa, Ohio

ORDER OF THE STATE BOARD OF PHARMACY

(Docket Number D-110220-221)

In The Matter Of:

ERIC DAVID RIEMAN

203 Knotty Pine Drive

Ottawa, Ohio 45875

INTRODUCTION

The Matter of Eric David Rieman came for hearing on March 6, 2012, before the following members of the Board: Donald M. Casar, R.Ph. (presiding); Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph.; Kevin J. Mitchell, R.Ph.; and Michael A. Moné, R.Ph.

Brian M. Joyce, R.Ph., Absent.

Eric David Rieman was represented by Daniel D. Connor. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness:

1. Eric David Rieman, Respondent

Respondent's Witnesses:

1. Eric David Rieman, Respondent
2. Dean Donald Stansloski
3. Dennis Rieman

State's Exhibits:

1. Copy of Proposal to Deny/Notice of Opportunity for Hearing letter [10-20-11]
1A-1D. Procedurals
2. Pharmacy Intern Registration Application submitted from Eric David Rieman with attachments [04-27-11]

Respondent's Exhibits:

- A. Three letters from the Dean and two Professors of the College of Pharmacy at The University of Findlay in re: Eric Rieman [02-12-12 thru 02-16-12]
- B. Resume and college transcript of Eric D. Rieman [2008 to Spring 2012]
- C. Pathways Counseling Center, Inc. Internal Client Activity Tracking Report; Specimen Result Certificate; Adult Diagnostic Assessment; Mental Status Exam (MSE) [12-20-11 to 01-06-12]
- D. Report from Jennifer Schmidt, MA, LPCC-S, LICDC of Pathways Counseling Center [02-27-12]
- E. ASTOP Discharge Summary in re: Eric Rieman [02-12-12]
- F. Support Group Attendance Records [12-09-11 to 02-20-12]
- G. Copies of Putnam County Summons' in Lieu of Arrest forms; Copies of Ottawa Village traffic violation and case numbers [03-07-10 and 02-07-11 and BAC Datamaster breath test form in re: Eric D. Rieman [03-07-10]
- H. Deposition of Matter in Steuben County, Indiana [11-02-11 to 03-02-12]
- I. Fraternity admission and recognition [03-15-11]
- J-K. Four letters of support [02-12-12 to 02-18-12]

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 Eric David Rieman applied to the Board for registration as an intern in the State of Ohio on April 27, 2011.
- (2) Eric David Rieman was arrested by the Ottawa Police Department on or about March 7, 2010, for operating a motor vehicle while under the influence of alcohol. Eric David Rieman tested .179 BAC, and subsequently pled guilty to and was convicted of operating a vehicle underage consumption on May 17, 2010. Such conduct constitutes not being of good moral character and habits within the meaning of Rule 4729-5-04 of the Ohio Administrative Code.
- (3) Eric David Rieman was arrested by the Putnam County Sheriff's Office on or about January 1, 2011, for underage consumption and obstructing official business. Eric David Rieman subsequently pled guilty to both charges and completed community service, then charges were dismissed. Such conduct constitutes not being of good moral character and habits within the meaning of Rule 4729-5-04 of the Ohio Administrative Code.

DECISION OF THE BOARD

Pursuant to Section 4729.11 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the Application for Registration as a Pharmacy Intern submitted by Eric David Rieman on April 27, 2011.

Michael Moné moved for Findings of Fact; Troy Gahm seconded the motion. Motion passed (Aye-6/Nay-0).

Kevin Mitchell moved for Action of the Board; Edward Cain seconded the motion. Motion passed (Aye-4/Nay-3). President Casar Voted.

The Board recessed briefly.

1:30 p.m.

The following candidates for licensure by reciprocity met in Room South A, 31st Floor, of the Vern Riffe Center for Government and the Arts. They introduced themselves and participated in a discussion of pharmacy laws and rules with the Board and Ms. Little, Licensing Administrator.

Charlotte Amacker	Arizona
Amy Burk	Virginia
Christopher Cantewell	Michigan
Pegah Farivar	California
William Farrell	Kentucky
Michelle Gisi	Michigan
Anne Kellogg	Kentucky
Cara Laurenza	Pennsylvania
Kimberly Loesch	Texas

Yousif Rojeab	Michigan
Adam Rose	Virginia
Kathleen Rybarz	Michigan
Ashwani Sheoran	Michigan
Emoyakpo Urhie	West Virginia

2:00 p.m. The meeting was recessed for the day.

Wednesday, March 7, 2012

8:30 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:

Donald M. Casar, R.Ph., President; Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph.; and Kevin J. Mitchell, R.Ph.; Michael A. Moné, R.Ph.

8:48 a.m. Ms. Lange moved that the Board recess to executive session in order to consider this quasi-judicial matter in accordance with Chapter 119. of the Revised Code and to confer with attorney. The motion was seconded by Mr. Gahm and a roll-call vote was conducted by President Casar as follows: Cain – *yes*; Gahm – *yes*; Kolezynski– *yes*; Lange – *yes*; Mitchell – *yes*; Moné – *yes*.

Mr. Gahm moved to accept the settlement agreement offer in the matter of Thomas M. Clancy, R.Ph. The motion was seconded by Ms. Lange and a roll-call vote was conducted by President Casar as follows: Cain – *yes*; Gahm – *yes*; Kolezynski– *yes*; Lange – *yes*; Mitchell – *yes*; Moné – *yes*.

9:00 a.m. The Board was joined by Assistant Attorney General Henry Appel to conduct a adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Richard Duane Brunst, R.Ph.**, (03-3-18429), Cincinnati, Ohio.

9:10 a.m. The Board went off the record to review the exhibits.

9:28 a.m. The meeting resumed.

10:18 a.m. The hearing ended and the record was closed.

10:20 a.m. Ms. Lange moved that the Board recess to executive session in order to consider this quasi-judicial matter in accordance with Chapter 119 of the Revised Code. The motion was seconded by Mr. Moné and a roll-call vote was conducted by President Casar as follows: Cain – *yes*; Gahm – *yes*; Kolezynski– *yes*; Lange – *yes*; Mitchell – *yes*; Moné – *yes*.

10:35 a.m. The Executive Session ended and the meeting was opened to the public.

R-2012-268 After votes were taken in public session, the Board adopted the following order in the matter of **Richard Duane Brunst, R.Ph.**, (03-3-18429), Cincinnati, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Docket Number D-110829-211)

In The Matter Of:

RICHARD DUANE BRUNST, R.Ph.

6001 Pineview Lane
Cincinnati, Ohio 45247
(R.Ph. Number 03-3-18429)

INTRODUCTION

The Matter of Richard Duane Brunst came for hearing on March 7, 2012, before the following members of the Board: Donald M. Casar, R.Ph. (presiding); Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Richard F. Kolezynski, R.Ph.; Deborah A. Lange, R.Ph.; Kevin J. Mitchell, R.Ph.; and Michael A. Moné, R.Ph.

Brian M. Joyce, R.Ph., Absent.

Richard Duane Brunst was represented by Harry B. Plotnick. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness:

1. Richard Duane Brunst, R.Ph., Respondent

Respondent's Witness:

1. Richard Duane Brunst, R.Ph., Respondent

State's Exhibits:

1. Copy of Summary Suspension Order/Notice of Opportunity for Hearing letter [08-29-11]
- 1A-1B. Procedurals
2. Addendum Notice/Summary Suspension Order [10-29-11]
- 2A-2E. Procedurals
3. Notarized Statement of Richard D. Brunst, R.Ph. [08-17-11]
4. Drug Accountability Statement at Rohe Pharmacy for alprazolam 1 mg; alprazolam 2 mg; diazepam 10 mg; hydrocodone/APAP 10/325; hydrocodone/APAP 5/500 [09-07-11]
5. Dangerous Drug Distributor Inspection Report for Rohe Pharmacy [08-15-11]
6. Minimum Starting Inventory Spreadsheet for alprazolam 1 mg [08-24-10 to 08-15-11]

7. Minimum Starting Inventory Spreadsheet for alprazolam 2 mg [09-22-10 to 08-15-11]
8. Minimum Starting Inventory Spreadsheet for diazepam 10 mg [08-24-10 to 08-15-11]
9. Minimum Starting Inventory Spreadsheet for hydrocodone/APAP 5/500 [08-24-10 to 08-15-11]
10. Minimum Starting Inventory Spreadsheet for hydrocodone/APAP 3/325 [08-27-10 to 08-15-11]
11. Entry Withdrawing Plea of Not Guilty and Entering Plea of No Contest, The State of Ohio vs Richard Brunst, Court of Common Pleas Hamilton County, Ohio Criminal Division [02-27-12]
12. Entry Vacating Plea Entered on January 9, 2012, State of Ohio vs Richard Brunst, Court of Common Pleas Hamilton County Ohio [02-27-12]
13. Entry Finding Defendant Eligible for Treatment In Lieu of Conviction, Staying Proceedings, and Ordering Period of Rehabilitation, State of Ohio vs Richard Brunst, Court of Common Pleas Hamilton County, Ohio [02-27-12]
14. Entry Granting Intervention in Lieu of Conviction, State of Ohio vs Richard Brunst, Hamilton County Common Pleas Court Hamilton County, Ohio [02-27-11]

Respondent's Exhibits:

- A1. PRO Pharmacist's Recovery Contract for Richard D. Brunst [11-27-11]
- A2. Treatment documentation from Bethesda Trihealth and Shepherd Hill [08-17-11 to 11-11-11]
- A3. LabCorp urine testing data [09-02-11 to 11-12-11]; OHPRO Test History Report [01-01-12 to 02-22-12]
- A4. Support group attendance records [11-28-11 to 03-06-12]
- A5. Individualized Service Plan – Alcoholism Council of the Cincinnati Area for Richard D. Brunst [01-18-12]
- A6. Copies of current prescription for Protonix 40 mg and trazodone HCT 100 mg for Richard D. Brunst [12-19-11]
- A7. Letter of support from James F. Liebetrau, R.Ph., Vice President, PRO [03-03-12]

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 Richard Duane Brunst was originally licensed in the State of Ohio on July 30, 1990, pursuant to examination, and his license to practice pharmacy in the State of Ohio was summarily suspended effective August 29, 2011.

- (2) Richard Duane Brunst 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: Richard Duane Brunst has admitted to a Board agent that he is addicted to controlled substances and alcohol. Richard Duane Brunst has admitted to stealing drugs from the pharmacy in which he worked so as to help him sleep, but due to recent events Richard Duane Brunst's drug use has escalated. Richard Duane Brunst has admitted that he recently experienced delirium tremens (DTs). Such conduct indicates that Richard Duane Brunst is within the ambit of Sections 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.
- (3) Richard Duane Brunst did, from August 24, 2010, through August 15, 2011, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Rohe Pharmacy, beyond the scope of consent of the owner, to wit: Richard Duane Brunst stole 6671 tablets of hydrocodone 10 mg with APAP 325 mg and 585 tablets of hydrocodone 5 mg with APAP 500 mg from his pharmacy employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Richard Duane Brunst did, from August 24, 2010, through August 15, 2011, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Rohe Pharmacy, beyond the scope of consent of the owner, to wit: Richard Duane Brunst stole 6238 tablets of diazepam 10 mg, 1744 tablets of alprazolam 1 mg, and 625 tablets of alprazolam 2 mg from his pharmacy employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (5) Richard Duane Brunst as the Responsible Pharmacist at Rohe Pharmacy did, from August 24, 2010, through August 15, 2011, fail to take and maintain a biennial inventory of all controlled substances received on behalf of the pharmacy. On January 6, 2004, Richard Duane Brunst was admonished in writing by a Board agent for failing to maintain these inventories. Such conduct is in violation of Rule 4729-9-14(B)(4) of the Ohio

Administrative Code and Section 1304.11(c) of the Code of Federal Regulations.

CONCLUSIONS OF LAW

- (1) 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.
- (2) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitute 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.
- (3) 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 Richard Duane Brunst on August 29, 2011.

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, Number 03-3-18429, held by Richard Duane Brunst and such suspension is effective as of the date of the mailing of this Order.

- (A) Richard Duane Brunst, 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) Richard Duane Brunst, 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 two years from the effective date of this Order, the Board will consider any petition filed by Richard Duane Brunst 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) Richard Duane Brunst 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, upon signing, submit a copy of the 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) Alcohol must be added to the standard urine drug screen. A Breathalyzer may be used to test for alcohol, but an appropriately certified individual must conduct the test within twelve hours of notification.
 - (c) 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 calendar week (Sunday through Saturday), 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) Richard Duane Brunst must demonstrate satisfactory proof to the Board that he is no longer addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.
- (C) Richard Duane Brunst must provide, at the reinstatement petition hearing, documentation of the following:
- (1) Compliance with the contract required above (e.g.-proof of giving the sample within twelve hours of notification and copies of all drug and alcohol screen reports, meeting attendance records, treatment program reports, etc.);
 - (2) 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;
 - (3) Compliance with the terms of this Order.
- (D) If reinstatement is not accomplished within three years of the effective date of this Order, Richard Duane Brunst must also show successful completion of the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination approved by the Board.
- (E) Upon such time as the Board may consider reinstatement, Richard Duane Brunst 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.

Deborah Lange moved for Findings of Fact; Troy Gahm seconded the motion. Motion passed (Aye-6/Nay-0).

Troy Gahm moved for Conclusions of Law; Michael Moné seconded the motion. Motion passed (Aye-6/Nay-0).

Deborah Lange moved for Action of the Board; Troy Gahm seconded the motion.
Motion passed (Aye-5/Nay-1).

10:20 a.m. The hearing ended and the record was closed.

10:22 a.m. Mr. Gahm moved that the Board recess to executive session in order to consider this quasi-judicial matter in accordance with Chapter 119. of the Revised Code and confer with attorney. The motion was seconded by Mr. Cain and a roll-call vote was conducted by President Casar as follows: Cain – *yes*; Gahm – *yes*; Kolezynski– *yes*; Lange – *yes*; Mitchell – *yes*; Moné – *yes*.

10:45 a.m. Mr. Gahm 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 Mr. Kolezynski and a roll-call vote was conducted by President Casar as follows: Gahm – *yes*; Kolezynski– *yes*; Lange – *yes*; Mitchell – *yes*; Moné – *yes*.

11:42 a.m. Mr. Gahm moved that the Board receive Per Diem as follows:

PER DIEM	3/5	3/6	3/7	Total
Cain	1	1	1	3
Casar	1	1	1	3
Gahm	1	1	1	3
Joyce	1	-	-	1
Lange	1	1	1	3
Kolezynski	1	1	1	3
Mitchell	1	1	1	3
Moné	1	1	1	3

Ms. Lange seconded the motion and it was approved by the Board: *Aye* – 6.

1:44 p.m. Mr. Kolezynski moved that the meeting be adjourned. The motion was seconded by Mr. Cain and approved by the Board: *Aye* – 6.

The Ohio State Board of Pharmacy approved these Minutes April 2, 2012