Minutes of the February 3-4, 2014
Meeting of the Ohio State Board of Pharmacy

Monday, February 3, 2014

10:00 a.m. The Ohio State Board of Pharmacy convened in Room South B&C, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

Kevin J. Mitchell, R.Ph., President; Michael A. Moné, R.Ph., Vice-President; Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Megan E. Marchal, R.Ph. and Kilee S. Yarosh, R.Ph.

Also present were Kyle Parker, Executive Director; Tracy Nave, Director of Legal Affairs; Eric Griffin, Compliance Supervisor; Jennifer Utterdyke, Director of Internship and Licensing; Cameron McNamee, Legislative Affairs Liaison and Charissa Payer, Assistant Attorney General.

Ms. Huwer provided the Nursing Board CPG meeting report and announced that, starting in May, Ms. Ferris will attend these meetings going forward.

Mr. McNamee presented the Legislative Report.

Mr. Griffin introduced Mr. John West, Compliance Agent, to the Board.

Mr. Griffin provided the Compliance update.

Ms. Utterdyke provided the Licensing Update.

Mr. Moné requested that Ms. Nave draft a general settlement for Continuing Education (C.E.) Falsification and bring this draft to the Board for a vote.

Mr. Parker provided the OARRS/I.T. report.

10:35 a.m. The students in the audience introduced themselves to the Board.

Mr. Lopez, representing Kelly A. Schmid, R.Ph., Gahanna, Ohio, presented the Board with a request for continuance of the hearing.

R-2014-133 Mr. Moné moved that the requested continuance, in the matter of Kelly A. Schmid, R.Ph., Gahanna, Ohio, be granted and the pharmacist license and wall certificate be returned to the Board. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 6/Nay – 1.
Ms. Sandra Jahangiri, representing Kenneth Kennedy, R.Ph., Fort Thomas, Kentucky, presented the Board with a request for continuance of the hearing to the March Board Meeting.

R-2014-134 Mr. Moné moved that the requested continuance, in the matter of Kenneth Kennedy, R.Ph., Fort Thomas, Kentucky, be granted, the pharmacist license and wall certificate be returned to the Board, and that the Board issue a subpoena for Mr. Kennedy’s necessary psychiatrist. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 7.

The Board recessed briefly.

11:06 a.m. The meeting reconvened in Room South B&C.

Mr. Parker led a discussion on out-of-state compounders.

11:37 a.m. Mr. Kolezynski moved that the Board go into Executive Session to consider the investigation of charges or complaints against a licensee, confer with Board counsel regarding a pending or imminent court action and to discuss matters required to be confidential by law pursuant to Section 121.22(G)(1), (3) & (5) of the Ohio Revised Code. The motion was seconded by Ms. Yarosh and a roll-call vote was conducted by President Mitchell as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski – yes; Marchal – yes; Moné – yes and Yarosh – yes.

12:00 p.m. The Executive Session ended and the meeting was opened to the public.

The Board recessed for lunch.

1:33 p.m. The meeting reconvened in Room South B&C.

Mr. Kolezynski moved that the Board go into Executive Session to consider the investigation of charges or complaints against a licensee, confer with Board counsel regarding a pending or imminent court action and to discuss matters required to be confidential by law pursuant to Section 121.22(G)(1), (3) & (5) of the Ohio Revised Code. The motion was seconded by Ms. Huwer and a roll-call vote was conducted by President Mitchell as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski – yes; Marchal – yes; Moné – yes and Yarosh – yes.

2:00 p.m. The Executive Session ended and the meeting was opened to the public.

Mr. Mitchell announced that the Board Meeting scheduled for Wednesday, February 5, 2014 will be canceled.
The Board was joined by Assistant Attorney General Charissa Payer to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of Joseph T. Merrill, R.Ph. (03-2-30581) Canal Winchester, Ohio.

Ms. Huwer recused herself from the hearing.

3:55 p.m. The hearing ended and the record was closed.

Ms. Yarosh moved that the Board recess in order to consider this quasi-judicial matter in accordance with Chapter 119. of the Revised Code and the case precedent of Angerman v. State Medical Bd. (1990) 70 Ohio App.3d 346 and TBC Westlake Inc. v. Hamilton Cty Bd of Revision, et al. (1998) 81 Ohio St.3d 58. The motion was seconded by Ms. Marchal and a roll-call vote was conducted by President Mitchell as follows: Cain – yes; Ferris – yes; Kolezynski – yes; Marchal – yes; Moné – yes; Yarosh – yes.

4:23 p.m. The recess ended and the hearing was opened to the public.

R-2014-135 After votes were taken in public session, the Board adopted the following order in the matter of Joseph T. Merrill, R.Ph. (03-2-30581) Canal Winchester, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY
(Case Number 2013-1220)

In The Matter Of:

JOSEPH TYSON MERRILL, R.Ph.
32 Park Street
Canal Winchester, Ohio 43110
(R.Ph. Number 03-2-30581)

INTRODUCTION


Margaret A. Huwer, R.Ph., Recused

Joseph Tyson Merrill was represented by Daniel D. Connor. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.
SUMMARY OF EVIDENCE

State’s Witnesses:
1. Joseph Tyson Merrill, R.Ph., Respondent

Respondent’s Witnesses:
1. Robert Amiet, R.Ph., Ohio State Board of Pharmacy

State’s Exhibits:
2. Notarized Statement of Joseph Merrill [03-07-13]
3. Ohio Health Automated Report [03-07-13]

Respondent’s Exhibits:
A. PRO Contract [05-21-13]
B. Glenbeigh History and Physical [03-23-13]
C. Discharge Summary from Glenbeigh [01-15-14]
D. Report by David Newton-Gatts Correcting Discharge Summary [01-20-14]
E. Report by David Newton-Gatts, Glenbeigh Counselor [01-08-14]
F. Report by Timothy Miller, Parkside Counselor [01-02-14]
G. Urine Drug Screen Report [01-01-13 to 01-27-14]
H. Prescription for Naltrexone [05-13-13]
I. Meeting Attendance Sheets [03-14-13 to 01-30-14]
J. Meeting Attendance Calendars [March 2013 to January 2014]
K. Continuing Education Certificates [12-01-10 to 01-14-14]
L. Report from AA Sponsor and Employer [01-27-14]
M. Report from PRO Advocate [01-28-14]
N. Photographs Showing Skin Rash in September 2013 Not Dated
O. Letters of Advocacy [01-04-14 to 01-14-14]

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 Joseph Tyson Merrill was originally licensed in the State of Ohio on August 13, 2010, pursuant to examination and his license to practice pharmacy in the State of Ohio was Summary Suspended effective October 11, 2013.
(2) Joseph Tyson Merrill is addicted to or abusing drugs or alcohol and/or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Joseph Tyson Merrill has admitted to stealing drugs from his employer for his own personal use on or around the timeframe of August 11, 2012 through February 27, 2013. Such conduct indicates that Joseph Tyson Merrill is within the ambit of Sections 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.

(3) Joseph Tyson Merrill did, on or around the timeframe of August 11, 2012 through February 27, 2013, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of OhioHealth Emergency Care Center Pharmacy, beyond the express or implied consent of the owner, to wit: Joseph Tyson Merrill was observed and has admitted to removing from the pharmacy a dangerous drug that was not for a legitimate medical purpose. Specifically, Joseph Tyson Merrill stole tramadol 50 mg tablets on at least 79 separate occasions during the above-mentioned timeframe. Joseph Tyson Merrill did this by removing the drugs from the Med Carousel and the Pyxis machine at his place of work. 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 (3) 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(A)(2) of the Ohio Revised Code.

(2) 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.

(3) Further, as a result of the evidence and testimony presented, 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 Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16(A)(5) 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 Joseph Tyson Merrill on October 11, 2013.

Pursuant to Section 4729.16 of the Ohio Revised Code, and on the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby
suspends indefinitely the pharmacist identification card, No. 03-2-3058, held by Joseph Tyson Merrill and such suspension is effective as of the date of the mailing of this Order.

(A) Joseph Tyson Merrill, 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) Joseph Tyson Merrill, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return the 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 one years from the effective date of this Order, the Board will consider any petition filed by Respondent 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) Joseph Tyson Merrill must enter into a new contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Mental Health and Addiction Services (ODMHAS) 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) 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 reports to the Board, 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) Joseph Tyson Merrill must demonstrate satisfactory proof to the Board that she is no longer addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy.

(C) Joseph Tyson Merrill 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, Joseph Tyson Merrill must also show successful completion of the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination approved by the Board.

(E) Any reinstatement shall not occur until such time as any criminal intervention in lieu of conviction has been successfully completed.

Megan Marchal moved for Findings of Fact; Rick Kolezynski seconded the motion. Motion passed (Aye-6/Nay-0/Abstain-1).

Michael Moné moved for Conclusions of Law; Kilee Yarosh seconded the motion. Motion passed (Aye-6/Nay-0/Abstain-1).

Melinda Ferris moved for Action of the Board; Kilee Yarosh seconded the motion. Motion passed (Aye-6/Nay-0/Abstain-1).

4:32 p.m. The Board was joined by Assistant Attorney General Charissa Payer to create a record in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of Ronald Alan Martin, R.Ph. (03-1-13053) Flatwoods, Kentucky.

Mr. Moné recused himself from the hearing.

4:48 p.m. The hearing ended and the record was closed.
Ms. Huwer moved that the Board recess in order to consider this quasi-judicial matter in accordance with Chapter 119. of the Revised Code and the case precedent of Angerman v. State Medical Bd. (1990) 70 Ohio App.3d 346 and TBC Westlake Inc. v. Hamilton Cty Bd of Revision, et al. (1998) 81 Ohio St.3d 58. The motion was seconded by Ms. Ferris and a roll-call vote was conducted by President Mitchell as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski – yes; Marchal – yes; Yarosh – yes.

4:55 p.m. The recess ended and the hearing was opened to the public.

R-2014-136 After votes were taken in public session, the Board adopted the following order in the matter of Ronald Alan Martin, R.Ph. (03-1-13053) Flatwoods, Kentucky.

ORDER OF THE STATE BOARD OF PHARMACY
(Case Number 2013-1027)

In The Matter Of:

RONALD ALAN MARTIN, R.Ph.
1103 Grandview Drive
Flatwoods, Kentucky 41139

INTRODUCTION

The Matter of Ronald Alan Martin came for consideration on February 3, 2014, before the following members of the Board:  Kevin J. Mitchell, R.Ph.; (presiding); Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Megan E. Marchal, R.Ph. and Kilee S. Yarosh, R.Ph.

Michael A. Moné, R.Ph., recused.

Ronald Alan Martin was not present nor was he represented by Counsel. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State’s Witness:
1. Kevin Flaharty, Ohio State Board of Pharmacy

Respondent’s Witnesses:
None

State’s Exhibits:
1A Procedural
2. Reciprocity Application to the State of Ohio [12-26-12]
3. Kentucky Board of Pharmacy Agreed Order [10-27-99]
4. Kentucky Board of Pharmacy Agreed Order [07-20-00]
5. Kentucky Board of Pharmacy Agreed Order [09-11-02]

Respondent's Exhibits:
None

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) Ronald Alan Martin is a registered pharmacist in the state of Kentucky, and on or about December 18, 2012 applied for reciprocal registration into the State of Ohio.

(2) Ronald Alan Martin did, on or about December 18, 2012, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Ronald Alan Martin indicated on his Application for Transfer of Pharmacist License to the State of Ohio that his pharmacist license had never been revoked, suspended, restricted, terminated, or otherwise been subject to disciplinary action (public or private) by any board of pharmacy or other state authority when in fact Ronald Alan Martin’s Kentucky pharmacy license was disciplined on three separate occasions. In 1999, his license was fined $500 for failure to obtain the required hours of continuing education. (KY Case No. 99-0123). In 2000, Ronald Alan Martin’s license was suspended for one (1) year for possessing legend drugs after directed to return them to the Kentucky Board of Pharmacy. (KY Case No. 00-0017C). In 2002, Ronald Alan Martin was again fined for practicing with an expired license. (KY Case No. 02-0095). Such conduct is in violation of Section 2921.13 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 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 constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16(A)(5) of the Ohio Revised Code.
(3) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes having committed fraud, misrepresentation, or deception in applying for or securing a license or identification card issued by the board under this chapter or under Chapter 3715. or 3719. of the Revised Code.

(4) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes not being of good moral character and habits as provided in paragraph (C) of Rule 4729-5-04(C) of the Ohio Administrative Code.

(5) Further, as a result of the evidence and testimony presented, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes having been disciplined by a state board of pharmacy pursuant to Section 4729.16 of the Revised Code as provided in paragraph (F) of Rule 4729-5-04 of the Ohio Administrative Code.

DECISION OF THE BOARD

On the basis of the Findings of Fact set forth above, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Ronald Alan Martin as follows:

Pursuant to Sections 4729.09 and 4729.16 of the Ohio Revised Code and Rule 4729-5-04 of the Ohio Administrative Code, and on the basis of the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby denies the issuance of a certificate of registration or an identification card to practice as a pharmacist in Ohio and, therefore, denies the Official Application for Transfer of Pharmaceutical Licensure submitted by Ronald Alan Martin on or about December 18, 2012.

Richard Kolezynski moved for Findings of Fact; Margaret Huwer seconded the motion. Motion passed (Aye-6/Nay-0/Abstain-1).

Margaret Huwer moved for Conclusions of Law; Megan E. Marchal seconded the motion. Motion passed (Aye-6/Nay-0/Abstain-1).

Edward Cain moved for Action of the Board; Melinda Ferris seconded the motion. Motion passed (Aye-6/Nay-0/Abstain-1).

Mr. Mitchell provided an update on the Board Meeting Agenda for Tuesday, February 4, 2014.

The Board recessed for the day.
Tuesday, February 4, 2014

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

Kevin J. Mitchell, R.Ph., President; Michael A. Moné, R.Ph., Vice-President; Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Megan E. Marchal, R.Ph. and Kilee S. Yarosh, R.Ph.

The students in the audience introduced themselves to the Board.

R-2014-137 Mr. Kolezynski moved that the Board Minutes of January 6-8, 2014, be approved as amended. Mr. Cain seconded the motion and it was approved by the Board: Aye – 7.

R-2014-138 Ms. Yarosh moved that the Board Minutes of January 14, 2014, be approved as written. Mr. Moné seconded the motion and it was approved by the Board: Aye – 7.

R-2014-139 Ms. Huwer moved that the Board Minutes of January 17, 2014, be approved as written. Ms. Marchal seconded the motion and it was approved by the Board: Aye – 7.

Mr. Griffin presented the yearly Compliance and Enforcement review of 2013.

9:39 a.m. Mr. Kolezynski moved that the Board go into Executive Session to discuss the employment of a public employee, the purchase of property and matters required to be confidential by law pursuant to Section 121.22(G)(1), (2) & (5) of the Ohio Revised Code. The motion was seconded by Ms. Huwer and a roll-call vote was conducted by President Mitchell as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski – yes; Marchal – yes; Moné – yes and Yarosh – yes.

10:13 a.m. The Executive Session ended and the meeting was opened to the public.

The Board recessed briefly.

10:19 a.m. The meeting reconvened in Room South B&C.

Mr. McNamee provided update on the Rules Review Committee and Veterans’ assistance.

R-2014-140 Ms. Ferris moved that the proposed rules be filed for review as amended. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 7.

11:15 a.m. The Board recessed briefly.

11:22 a.m. The meeting reconvened in Room South B&C.
Ms. Delinda McDaniel, Rx Consultant, LLC, presented the business model for a new consult medication therapy management entity.

R-2014-141 Mr. Moné moved that the Limited Terminal Distributor of Dangerous Drugs license request for Rx Consultant, LLC be approved pending final inspection for positive I.D. and security with quarterly inspections for the first twelve months. Ms. Marchal seconded the motion and it was approved by the Board: Aye – 7.

R-2014-142 Mr. Moné moved that the Board receive Per Diem as follows:

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Mr. Kolezynski seconded the motion and it was approved by the Board: Aye – 7.

R-2014-143 Mr. Moné moved that the Board renew the NABP membership dues. Mr. Kolezynski seconded the motion and it was approved by the Board: Aye – 7.

Mr. Mitchell appointed Ms. Ferris to the Nursing Board CPG meeting with Ms. Marchal as the alternate Pharmacy Board representative.

Mr. Mitchell appointed Ms. Huwer to the Medical Board PAPC meeting with Ms. Marchal as the alternate Pharmacy Board representative.

Mr. Parker led a discussion on Pharmacist vaccinations, House Bill 394, and mandatory vaccine reporting.

R-2014-144 Mr. Moné moved that the meeting be adjourned after reciprocity. The motion was seconded by Ms. Ferris and approved by the Board: Aye – 7.

The Board recessed for lunch.

1:30 p.m. The Board reconvened in Room South A, 31st Floor of the Vern Riffe Center for Government and the Arts. The following candidates for licensure by reciprocity introduced themselves to the Board, and then participated in a discussion of pharmacy laws and rules with Ms. Terri Ghitman, OARRS Pharmacist:
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Kevin J. Mitchell, R.Ph., President  
Date: 10 Mar 14

Kyle W. Parker, M.B.A., R.Ph., Executive Director  
Date: 3-10-14