



MINUTES OF THE JUNE 3-4, 2019
MEETING OF THE STATE OF OHIO BOARD OF PHARMACY

Monday, June 3, 2019

10:01 a.m. The State of Ohio Board of Pharmacy convened in the Hearing Room, 17th Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

Fred M. Weaver, RPh, Presiding; Shawn C. Wilt, RPh; Joshua M. Cox, RPh; Megan E. Marchal, RPh; Curtis L. Passafume, Jr., RPh; Jennifer M. Rudell, RPh; and Kilee S. Yarosh, RPh.

Donald R. Miller, RPh and Richard J. Newlon, RPH, **Absent**

Also present were Nicole Dehner, *Chief Legal Counsel*; Joe Koltak, *Senior Legal Counsel*; Justin Sheridan, *Senior Legal Counsel*; Ashley Gilbert, *Senior Legal Counsel*; and Kathryn Lewis, *Administrative Assistant*.

The Board was joined by Assistant Attorney General Henry Appel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. In the Matter of **Donna Thomas, Cincinnati, Ohio.**

R-2019-312 Mr. Wilt moved that the Board recess in order to consider the quasi-judicial matters 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 Mr. Passafume and a roll-call vote was conducted by President Weaver as follows: Wilt-yes; Cox-yes; Marchal-yes; Passafume-yes; Rudell-yes; Yarosh-yes.

11:54 a.m. The recess ended and the hearing was opened to the public.

R-2019-313 After votes were taken in public session, the Board adopted the following order in the matter of **Donna Thomas, Cincinnati, Ohio.**

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2018-1597)

In The Matter Of:

Donna Thomas, R.Ph.

9463 Ambleside Dr.

Cincinnati, Ohio 45241

(License No. 03-2-36776)

INTRODUCTION

The Matter of Donna Thomas came for hearing on June 3, 2019, before the following members of the State of Ohio Board of Pharmacy (Board): Fred M. Weaver, RPh, *Presiding*; Joshua M. Cox, RPh; Megan E. Marchal, RPh; Curtis L. Passafume, Jr., RPh; Jennifer M. Rudell, RPh; Shawn C. Wilt, RPh and Kilee S. Yarosh, RPh.

Donna Thomas was represented by Forest Heis. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

SUMMARY OF EVIDENCE**State's Witnesses:**

1. Donna Thomas

Respondent's Witnesses:

1. Donna Thomas

State's Exhibits:

- | | |
|------------------------------------|------------|
| 1. Notice Letter | 04.19.2018 |
| 2. Amended Notice Letter | 05.21.2018 |
| 3. Second Amended Notice Letter | 05.06.2019 |
| 4. Request for Hearing | 04.25.2018 |
| 5. Dexmethylphenidate ER25 form | 05.02.2018 |
| 6. Dexmethylphenidate ER40 form | 05.02.2018 |
| 7. Statement of Respondent | 04.16.2018 |
| 8. Indictment | 05.16.2018 |
| 9. Plea of Guilty / ILC Entry | 07.11.2018 |
| 10. Court Entry Accepting ILC | 07.17.2018 |
| 11. Positive Drug Screen (Cocaine) | 04.16.2019 |

12. FDA sheet on dexamethylphenidate January 2019

Respondent's Exhibits:

A. Signed Meeting Attendance Sheets	Various
B. Calendar of Meetings, Drug Screens, PO Appointments	April 2018-May 2019
C. PRO Drug Screen Reports	July 2018-May 2019
D. Northland Drug Screen Reports	December 2018-January 2019
E. Treatment Completion Forms	Various
F. Record of Restitution	04.11.2019
G. Current Status of Criminal Proceedings	Various
H. Pharmacist Continuing Education Credits Earned	September 20, 2017—April 7, 2019
I. Letters of Support	Various

FINDINGS OF FACT

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

1. On or about April 15, 2018, upon receiving a call from CVS Pharmacy #6133, the Board began an investigation into possible shortages of stimulants from the C-II safe at CVS Pharmacy #6133, 440 Oxford State Rd., Middletown, Ohio 45044, where Donna Thomas was employed. The shortages were identified while justifying the C-II perpetual inventory on April 14, 2018 and included three types/strengths of Dexmethylphenidate, Focalin, and Dextroamphetamine. Opening counts were conducted prior to Donna Thomas working her shift on April 15, 2018.
 - a. On April 16, 2018, upon reviewing opening and closing counts of Dexmethylphenidate ER 25 mg and ER 40 mg capsules from April 15, 2018, it was discovered that 21 capsules of Dexmethylphenidate ER 25mg were missing, and 21 capsules of Dexmethylphenidate ER 40 mg were missing. Donna Thomas was observed on video entering the C-II safe, cupping medication in her hand, but she was not filling prescriptions at that time.
 - b. During an interview with an agent of the Board on April 16, 2018, Donna Thomas admitted to stealing from CVS Pharmacy #6133, where she was employed, certain stimulants from the C-II safe over the previous few weeks in order to meet the rigid demands at work. Donna Thomas indicated she would get “foggy” and needed additional medication to continue to work. Donna Thomas acknowledged having a prescription for Dexmethylphenidate ER 40 mg, but indicated the prescription, which is for 70 capsules for a 14-day supply (5 capsules per day) was not sufficient. Donna Thomas admitted to needing the stimulants and needing help.
2. On or about May 16, 2018, Donna Thomas was indicted in Butler County for Theft of Drugs, a felony of the fourth degree. On or about July 11, 2018, Donna Thomas entered a plea of guilty

to Theft of Drugs, a felony of the fourth degree, and she was ordered to comply with all terms and conditions imposed by Intervention in Lieu of Conviction. *State of Ohio vs. Donna Thomas*, Case No. CR2018-05-0774.

3. On or about April 8, 2019, Donna Thomas provided a urine screen for drugs and alcohol. The results of the screen were positive for cocaine metabolite.

CONCLUSIONS OF LAW

1. Such conduct as set forth in the Findings of Fact Section constitutes a violation of Section 2913.02 of the ORC, theft of a controlled substance, a felony of the fourth degree.
2. Such conduct as set forth in of the Findings of Fact Section constitutes a violation of Section 2925.11(A) of the ORC, Possession of a Schedule II controlled substance, a felony of the fifth degree.
3. Such conduct as set forth in of the paragraph 3 of the Findings of Fact Section constitutes a violation of Section 2925.11(A) of the ORC, Possession of Cocaine, a felony of the fifth degree.
4. Such conduct as set forth in the Findings of Fact Section constitutes a violation of the following divisions of (A) of section 4729.16 of the ORC, effective September 29, 2017, each violation constituting a minor misdemeanor:
 - a. Has been convicted of a felony, or a crime of moral turpitude, ORC 4729.16(A)(2)(a); and
 - b. Engaged in dishonesty or unprofessional conduct in the practice of pharmacy, ORC 4729.16 Section (A)(2)(b); and
 - c. Is addicted to or abusing alcohol or drugs or is impaired physically or mentally to such a degree as to render the pharmacist unfit to practice pharmacy, ORC Section 4729.16(A)(2)(c); and
 - d. Violated...any of the provisions of chapters 4729., 2925. or 3719. of the Revised Code, or any rule adopted by the board under those provisions, ORC 4729.16(A)(2)(e); and
 - e. Engaged in any conduct for which the board may imposed discipline as set forth in rules adopted under section 4729.26 of the Revised Code, ORC Section 4729.16(A)(2)(l).
5. Such conduct as set forth in the Allegations section, if proven, constitutes a violation of each of the following divisions of Rule 4729-5-04 of the OAC, as effective April 28, 2016:
 - a. Violated any state or federal law or rule regardless of the jurisdiction in which the acts were committed, OAC Rule 4729-5-04(A); and
 - b. Violated...any of the provisions of Chapters 4729...3719., and 2925. of the Revised Code, or any rule adopted by the board under those provisions, OAC Rule 4729-5-04(B); and

- c. Committed acts that constitute moral turpitude as defined in section 4776.10 of the Revised Code or gross immorality, OAC Rule 4729-5-04(C); and
- d. Is addicted to or abusing alcohol, drugs or other chemical substances or impaired physically or mentally to such a degree as to render the pharmacist or pharmacy intern unfit to practice pharmacy, OAC Rule 4729-5-04(D).

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 Donna Thomas on May 6, 2019.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-2-36776, held by Donna Thomas and such suspension is effective as of the date of the mailing of this Order.

- 1. Donna Thomas, 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. Donna Thomas, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return her 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 twenty-four months from the effective date of this Order, the Board will consider any petition filed by Donna Thomas 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:

- 1. Donna Thomas must maintain a current address with the Board throughout the duration of the suspension.
- 2. Donna Thomas must provide full disclosure of her addiction, complete current list of medication usage, her suspension from the practice of pharmacy, and the terms of this Order within five days of receipt of this Order, to:
 - a. All law enforcement and court personnel involved in *State of Ohio vs. Donna Thomas*, Case No. CR2018-05-0774,
 - b. All licensed treatment healthcare professionals from whom Donna Thomas is receiving services;
 - c. All other treatment providers and/or monitoring providers, including the Pharmacists Rehabilitation Organization.

- d. Donna Thomas must provide the Board of Pharmacy a complete list of all individuals notified in accordance with this Order. Failure to provide a list of all notified individuals to the Board will be considered a violation of this Order.
 - e. Donna Thomas must request each person and/or provider listed herein to expressly acknowledge receipt of such information within in 60 days from the date of this Order. Letters of acknowledgement may be sent to legal@pharmacy.ohio.gov or 77 South High Street, 17th Floor, Columbus, Ohio. Failure of the listed persons/providers to provide acknowledgement to the Board will be considered to be a violation by Donna Thomas of this Order.
3. Donna Thomas must enter into and adhere to the terms of 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. Failure to adhere to the terms of the treatment contract will be considered a violation of the Board's Order and subject Donna Thomas to potential sanctions up to and including revocation of license. The contract must provide that:
- a. Random, **observed** urine drug screens shall be conducted at least once each month.
 - b. 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.
 - c. Alcohol and Ethyl Glucoronide (ETG) must be added to the standard urine drug screen.
 - d. 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.
 - e. In the event of a negative diluted screen, a hair sample test must be completed at the cost of the Donna Thomas in a timeframe consistent with the drug lab's recommended policy, but in any event no later than 12 days after the negative diluted screen.
 - f. 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.

- g. Attendance is required a minimum of three times per calendar week (Sunday through Saturday) on separate days, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - h. The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- 4. Donna Thomas shall not refuse an employer provided drug or alcohol screen. If the Board becomes aware of any positive drug or alcohol screen results that were obtained in the course of employment or any mechanism other than via the signed contract with ODMHAS, the Board shall treat these results as a violation of the Board's Order and request Donna Thomas reappear before the Board for possible additional sanctions, including and up to revocation of license.
- 5. Donna Thomas shall not refuse a breathalyzer or other drug testing requested by law enforcement during the duration of suspension. The Board shall treat any such refusal as a violation of the Board's Order and request Donna Thomas reappear before the Board for possible additional sanctions, including and up to revocation of license.
- 6. Donna Thomas must immediately report any violation of the terms of this suspension to the Board by contacting legal@pharmacy.ohio.gov. Failure to self-report any violation shall be treated as a violation of this Board's Order and will subject Donna Thomas to possible additional sanctions, including and up to revocation of license.
- 7. Donna Thomas 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.
- 8. Donna Thomas must provide, in the reinstatement petition, documentation of the following:
 - a. **Strict 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.);
 - b. **Strict compliance** with the terms of this Order;
 - c. 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.
- 9. If reinstatement is not accomplished within **three years** of the effective date of this Order, Donna Thomas must also show successful completion of the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Exam (MPJE), or an equivalent examination(s) approved by the Board.

10. Any reinstatement shall not occur until such time as any criminal intervention in lieu of conviction has been successfully completed.
11. Violation of any term of suspension, including but not limited to any violation of the contract signed with the ODMHAS or other approved treatment provider may result in additional action before the Board up to and including revocation of your pharmacy license.
12. Any violation of Chapters 2925., 3715., 3719., 4729., of the Ohio Revised Code, any administrative code violation or a violation of any other state or federal law will be considered a violation of this Order resulting in a hearing before the Board and may also result in criminal and/or administrative charges.
13. If Donna Thomas's employment is related to the practice of pharmacy, Donna Thomas must notify employer of the terms of Donna Thomas's suspension and this Board's Order.
14. Failure to complete the terms set forth in this Board's Order, or to petition for reinstatement within five years of the date of this Order, will result in the Board issuing a notice of opportunity for hearing to consider additional disciplinary action, including and up to revocation of Donna Thomas's license.

Curtis L. Passafume moved for Findings of Fact; Jennifer M. Rudell seconded the motion. Motion passed (Aye-6/Nay-0).

Shawn C. Wilt moved for Conclusions of Law; Kilee S. Yarosh seconded the motion. Motion passed (Aye-6/Nay-0).

Megan E. Marchal moved for Action of the Board; Curtis L. Passafume seconded the motion. Motion passed (Aye-6/Nay-0).

SO ORDERED.

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- 11:57 a.m.** Walter J. McNamara requested an emergency continuance in the Matter of Daniel Brainard. A hearing had previously been scheduled for June 3, 2019. Henry Appel, Assistant Attorney General on behalf of the State objected to the continuance. The Board granted the continuance and indicated no further continuances will be granted.
- 12:01 p.m.** The Board recessed for lunch.
- 12:52 p.m.** The Board was joined by Assistant Attorney General Henry Appel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. In the Matter of **Wellness Center, Middleburg Heights, Ohio.**
- R-2019-314** Mr. Wilt moved that the Board recess in order to consider the quasi-judicial matters 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. Rudell and a roll-call vote was conducted by President Weaver as follows: Wilt-yes; Cox-yes; Marchal-yes; Passafume-yes; Rudell-yes; and Yarosh-yes.

3:05 p.m. The recess ended and the hearing was opened to the public.

R-2019-315 After votes were taken in public session, the Board adopted the following order in the matter of **Wellness Center, Middleburg Heights, Ohio.**

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2017-2095)

In The Matter Of:

Wellness Center

Dr. Radha Baishnab
14861 Cherokee Trail
Middleburg Heights, OH 44130

INTRODUCTION

The Matter of Wellness Center came for hearing on June 3, 2019, before the following members of the State of Ohio Board of Pharmacy (Board): Fred M. Weaver, RPh, *Presiding*; Joshua M. Cox, RPh; Megan E. Marchal, RPh; Curtis L. Passafume, Jr., RPh; Jennifer M. Rudell, RPh; Shawn C. Wilt, RPh and Kilee S. Yarosh, RPh.

Wellness Center was represented by Walter J. McNamara. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

1. Dr. Radha Baishnab

Respondent's Witnesses:

1. Dr. Radha Baishnab

State's Exhibits:

1. Notice Letter
11.28.2018
2. Request for Hearing
12.20.2018
3. Initial Scheduling Order
12.27.2018

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|----------------------------------|---------|
| 4. Current Scheduling Order | |
| 04.18.2019 | |
| 5. Application for OBOT | |
| 06.01.2017 | |
| 6. Inspection | |
| 09.05.2017 | |
| 7. Photo of Building | No Date |
| 8. Photo of Garage | No Date |
| 9. Photo of Construction Garbage | No Date |

Respondent's Exhibits:

A. None

FINDINGS OF FACT

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

1. On the application, submitted on or about June 1, 2017, Dr. Radha Baishnab applied for a new OBOT license, providing the address location of 14861 Cherokee Trail, Middleburg Heights, Ohio 44130 on all paperwork submitted with the application.
 - a. The address 14861 Cherokee Trail is a split-level, residential home located in a subdivision within the city limits of Middleburg Heights. This area is strictly zoned as a residential area.
 - b. The building was having renovations completed with unknown individuals entering and exiting through an unsecured, open garage door and unlocked, open door leading into the building.
 - c. Dr. Radha Baishnab was not at the building, nor were any employees of Wellness Center. Therefore, agents from the Board were unable to complete an inspection of the potential license location, which would include an inability to access/review any required FBI/BCI background checks for Recovery of Hope.
 - d. Dr. Radha Baishnab acknowledged to an agent of the Board knowingly using the address of his personal residence on all TDDD-OBOT application paperwork submitted to the Board. He stated he did this because it is in the same area as where he is currently treating patients and he has changed addresses several times.
 - e. Dr. Radha Baishnab stated he was actually seeing patients at his son's office, which is located at 10900 Pearl Road, Suite C1, Strongsville, Ohio and is requesting a TDDD-OBOT

license separate from the license applied for by his son because they use “different patient rooms.”

- f. Dr. Radha Baishnab stated he is using 14816 Cherokee Trail for “correspondence” and is not seeing patients there.

CONCLUSIONS OF LAW

1. Such conduct as set forth in Findings of Fact Section, constitutes a violation of each of the following divisions of Section 4729.57 of the ORC:
 - a. Making any material false statements in an application for a license as a TDDD, ORC Section 4729.57(A)(1); and
 - b. Violating any rule of the board, ORC Section 4729.57(A)(2); and
 - c. Violating any provision of this chapter, ORC Section 4729.57(A)(3); and
 - d. Ceasing to satisfy the qualifications of a TDDD set forth in section 4729.55 of the Revised Code, ORC Section 4729.57(A)(7).
2. Such conduct as set forth in Findings of Fact Section, constitutes a violation of each of the following divisions of Section 4729.55 of the ORC, TDDD license requirements:
 - a. The applicant is equipped as to land, buildings, and equipment to properly carry on the business of a terminal distributor of dangerous drugs within the category of licensure approved by the board, ORC 4729.55(A); and
 - b. In the case of an applicant who is operating a facility, clinic, or other location described in division (B) of section 4729.553 of the Revised Code that must hold a category III terminal distributor of dangerous drugs license with an office-based opioid treatment classification, the applicant meets the requirements to receive that license with that classification, ORC 4729.55(K).
3. Such conduct as set forth in the Findings of Fact Section, constitutes a violation of each of the Section 4729.553 of the ORC:
 - a. To be eligible to receive a license as a category III terminal distributor of dangerous drugs with an office-based opioid treatment classification, an applicant shall submit evidence satisfactory to the Board that the applicant’s office-based opioid treatment will be operated in accordance with the requirements specified in division (D) of this section and that the applicants meets any other applicable requirements of this chapter, ORC 4729.553(C); and
 - b. The holder of a category III terminal distributor license with an office-based opioid treatment classification shall do all of the following:

- i. Require any person with ownership of the facility to submit to a criminal records check in accordance with section 4776.02 of the Revised Code and send the results of the criminal records check directly to the state board of pharmacy for review and decision under section 4729.071 of the Revised Code, ORC 4729.553(D)(3); and
 - ii. Maintain a list of each person with ownership of the facility and notify the Board of any change to that list, ORC 4729(D)(5); and
4. Such conduct as set forth in Findings of Fact Section, constitutes a violation of Rule 4729-18-02(C) of the Ohio Administrative Code (OAC), a location licensed as a TDDD with an OBOT classification shall have a responsible person at all times.
5. Such conduct as set forth in Findings of Fact Section, constitutes a violation of each of the following divisions of Section 4729-18-03 of the OAC, OBOT Facilities, Criminal records checks for office-based opioid treatment facilities:
 - a. A TDDD license with an OBOT classification will not be issued until the physician owner(s), or, if incorporated, the physician officers, of the OBOT facility submit fingerprints to the Ohio Bureau of Criminal Identification and Investigation (BCI & I) for a criminal records check. The results must be sent directly to the Board from BCI & I and have been performed within the last twelve months to be valid, OAC 4729-18-03(B).
6. Such conduct as set forth in Findings of Fact Section, constitutes a violation of each of the following divisions of Section 4729-18-04 of the Ohio Administrative Code (OAC), each punishable by a maximum penalty of \$1,000, a facility as a TDDD with an OBOT classification and all prescribers practicing at that facility shall comply with the following:
 - a. The requirements for conducting office-based opioid treatment pursuant to Rule 4731-11-12 of the Administrative Code, OAC 4729-18-04(A); and
 - b. Patient limits and all other requirements set forth in 42 CFR Part 8 (9/9/2016), OAC 4729-18-04(B); and
 - c. Inspection and corrective action requirements pursuant to Rule 4729-9-09 of the Administrative Code, OAC 4729-18-04(D).

DECISION OF THE BOARD

Pursuant to Section 4729.57 of the Ohio Revised Code, Rule 4729-9-19 of the Ohio Administrative Code, and after consideration of the record as a whole, the State of Ohio Board of Pharmacy hereby denies the Application for Registration as a Terminal Distributor of Dangerous Drugs submitted by Wellness Center on or about June 1, 2017.

Wellness Center must immediately reapply for Registration as a Terminal Distributor of Dangerous Drugs with an Office-Based Opioid Treatment classification at its current operating location. Wellness Center must meet the minimum qualifications for licensure.

Pursuant to Section 4729.57 of the Ohio Revised Code, the State of Ohio Board of Pharmacy imposes a monetary penalty in the amount of \$3,000.00. This fine will be attached to your license record and must be paid no later than 30 days from the effective date of this Order. To pay this fine you must login to www.license.ohio.gov and process the items in your cart.

Shawn C. Wilt moved for Findings of Fact; Jennifer M. Rudell seconded the motion. Motion passed (Aye-6/Nay-0).

Jennifer M. Rudell moved for Conclusions of Law; Curtis L. Passafume seconded the motion. Motion passed (Aye-6/Nay-0).

Curtis L. Passafume moved for Action of the Board; Megan E. Marchal seconded the motion. Motion passed (Aye-6/Nay-0).

SO ORDERED.

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- 3:08 p.m.** Ms. Wai continued the discussion on Cleveland Clinic Foundation's request on a Refill Authorization Program that had been tabled in May. On behalf of the Cleveland Clinic Foundation, the following staff were present to answer questions posed by the Board: Dr. Robert Wyllie, Erick Sokn, and Scott Knoer.
- 4:41 p.m.** Ms. Southard Provided the Licensing Report.
- 4:50 p.m.** Ms. Southard led a discussion on the Test of English as a Foreign Language.
- 4:53 p.m.** Ms. Ghitman presented Buckeye Career Center's application for a pharmacy technician training program.
- R-2019-316** Mr. Cox moved that the Board approve Buckeye Career Center's application. The motion was seconded by Mr. Passafume and approved by the Board: Aye-6, Nay-0.
- 5:00 p.m.** Mr. McNamee presented a resolution for Off-Site Storage of Naloxone to the Board for approval.
- R-2019-317** Ms. Marchal moved that the Board approve the resolution. The motion was seconded by Ms. Yarosh and approved by the Board: Aye-6, Nay-0. The following resolution was adopted by the Board:
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Off-Site Storage of Naloxone

Pursuant to agency 4729 of the Administrative Code, the Board hereby authorizes a terminal distributor of dangerous drugs to maintain a supply of naloxone for the purpose of being personally furnished in accordance with section 4731.941 of the Revised Code at a location other than that which is licensed by the Board. The naloxone maintained at an off-site location must adhere to the applicable storage and record keeping requirements of agency 4729 of the

Administrative Code.

5:02 p.m.

Mr. McNamee presented a resolution for OBOT Exemption to the Board for approval.

R-2019-318

Mr. Passafume moved that the Board approve the resolution. The motion was seconded by Ms. Yarosh and approved by the Board: Aye-6, Nay-0. The following resolution was adopted by the Board:

OBOT Exemption

The Board hereby exempts the following from licensure required by section 4729.553 and authorizes a corresponding modification to rule 4729:5-18-01 of the Administrative Code:

A board of health of a city or general health district established by section 3709.01 of the Revised Code, or the authority having the duties of a board of health in any city as authorized by section 3709.05 of the Revised Code;

5:05 p.m.

Mr. McNamee presented a resolution for EMS Drug Administration Record Keeping to the Board for approval.

R-2019-319

Mr. Cox moved that the Board approve the resolution. The motion was seconded by Mr. Wilt and approved by the Board: Aye-6, Nay-0. The following resolution was adopted by the Board:

EMS Drug Administration Record Keeping

An EMS organization participating in an emergency scenario where drugs are administered from one EMS unit by personnel of another EMS unit, may document drug administration as follows:

An EMS organization participating in an emergency scenario where drugs are administered from one EMS unit by personnel of another EMS unit, may document drug administration as follows:

(1) Records of administering dangerous drugs shall be legible and shall contain the name of the EMS organization of the person who administered the drug, name and strength of the drug administered, date of administration, time of administration, amount of the dose administered, the name or other means of identifying the patient, such as medical record number or run number; and

(2) The first name and last name of the EMS personnel from the EMS unit, which originally possessed the dangerous drugs administered, who will assume responsibility for documenting drug administration using either of the following methods:

- (a) An electronic signature in a computerized recordkeeping system; or
 - (b) Any form of positive identification.
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R-2019-320

Mr. Wilt 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 Weaver as follows: Wilt-yes; Cox-yes; Marchal-yes; Passafume-yes; Rudell-yes; Yarosh-yes.

5:53 p.m. Board recessed for the day.

Tuesday, June 4, 2019

9:08 a.m.

The State of Ohio Board of Pharmacy convened in the Hearing Room, 17th Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

Fred M. Weaver, RPh, Presiding; Shawn C. Wilt, RPh; Joshua M. Cox, RPh; Megan E. Marchal, RPh; and Curtis L. Passafume, Jr., RPh; and Jennifer M. Rudell, RPh.

Donald R. Miller, RPh; Richard J. Newlon, RPh; and Kilee S. Yarosh, RPh **Absent**

Also present were Steven Schierholt, *Executive Director*; Nicole Dehner, *Chief Legal Counsel*; Joe Koltak, *Senior Legal Counsel*; Justin Sheridan, *Senior Legal Counsel*; Ashley Gilbert, *Senior Legal Counsel*; Eric Griffin, *Director of Compliance and Enforcement*; Thomas Pyles, *Chief of Investigations*; and Kathryn Lewis, *Administrative Assistant*.

The Board was joined by Jarrod Grossman, *Executive Director of Pharmacist Rehabilitation Organization*.

9:08 a.m.

Mr. Grossman announced that he will be stepping down as Executive Director of the Pharmacists Rehabilitation Organization (PRO) at the end of 2019. He is actively working with his replacement who will meet with the Board and Board staff later this year, prior to Mr. Grossman's departure.

9:13 a.m.

Mr. Griffin Provided the Compliance Report.

9:17 a.m.

Mr. Griffin introduced Dana Sutherland, newest member of the compliance team in the role of an Enforcement Agent.

R-2019-321

Mr. Wilt moved that the Board approve a Resolution for Yolanda A. Freeman. The motion was seconded by Mr. Passafume and approved by the Board: Aye-5, Nay-0. The following resolution was adopted by the Board:

A Resolution for Yolanda A. Freeman

WHEREAS , the professional contributions of Yolanda A. Freeman, as the Compliance and Enforcement Administrative Supervisor with the State of Ohio Board of Pharmacy, have aided in successful operations of the Compliance and Enforcement Department; therefore

BE IT RESOLVED, that the State of Ohio Board of Pharmacy hereby commends Yolanda A. Freeman for more than 30 years of exemplary service and performance to the Board and to the people of Ohio in carrying out the responsibilities of her position, and

BE IT ALSO RESOLVED, that we, the members of the State of Ohio Board of Pharmacy, in its one hundred thirty-fifth year, so express our profound appreciation to Yolanda A. Freeman for her dedication and service to the Board and the citizens of Ohio, and

BE IT FURTHER RESOLVED, that this resolution be spread upon the permanent minutes of the State of Ohio Board of Pharmacy.

June 30, 2019

9:24 a.m. Mr. Garner Presented the OARRS Report.

The Board was joined by Assistant Attorney General Henry Appel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. In the Matter of **Lia Harb, Knoxville, Tennessee**. Board Member Kilee S. Yarosh, RPh, joined the meeting.

R-2019-322 Mr. Wilt moved that the Board recess in order to consider the quasi-judicial matters 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. Rudell and a roll-call vote was conducted by President Weaver as follows: Wilt-yes; Cox-yes; Marchal-yes; Passafume-yes; Rudell-yes; Yarosh-yes.

10:47 a.m. The recess ended and the hearing was opened to the public.

R-2019-323 After votes were taken in public session, the Board adopted the following order in the matter **Lia Harb, Knoxville, Tennessee.**

ORDER OF THE STATE BOARD OF PHARMACY
(Case Number I-2018-1065 and A-2019-0067)

In The Matter Of:

Lia Harb, R.Ph.
7625 Christin Lee Circle
Knoxville, Tennessee 37931
(License No. 03-3-32619)

INTRODUCTION

The Matter of Lia Harb came for hearing on June 4, 2019, before the following members of the State of Ohio Board of Pharmacy (Board): Fred M. Weaver, RPh, *Presiding*; Shawn C. Wilt, RPh; Joshua M. Cox, RPh; Megan E. Marchal, RPh; Curtis L. Passafume, Jr., RPh; Jennifer M. Rudell, RPh; and Kilee S. Yarosh, RPh.

Lia Harb was not represented by counsel. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

1. Lia Harb—Petitioner

Respondent's Witnesses:

1. Lia Harb—Petitioner

State's Exhibits:

1. 8/6/18 Notice Letter
08.06.2018
2. 5/8/18 Board Order
05.08.2018
3. 7/2/18 Board Order
07.12.2018
4. 3/13/2019 Board Order
03.13.2019
5. Proof of Service of 3/13/2019 Board Order
04.25.2019

6. Scheduling Order for Hearing
05.16.2019
7. E-mail from Tennessee Pharmacists Association
05.02.2019
8. Aftercare Contract with Tennessee Pharmacist Association
12.10.2018
9. Letter from Cornerstone of Recovery
04.15.2019
10. Hair Test Administered 4/16/19
04.19.2019

Respondent's Exhibits:

- | | | |
|----|--|-----------------------------|
| A. | Ohio Pro Letter re TPRN Program
05.22.2019 | |
| B. | TPRN Letter re Lia Harb
05.28.2019 | |
| C. | Cornerstone Treatment Letter
04.15.2019 | |
| D. | Cornerstone Biopsychosocial Summary | No Date |
| E. | Cornerstone Discharge Summary | No Date |
| F. | TPRN Aftercare Contract
12.10.2018 | |
| G. | Hair Test Results April 2019
04.19.2019 | |
| H. | TPRN Test Results Lia Harb Dec 2018-May 2019
05.25.2019 | |
| I. | TPRN Test Verification Reports Lia Harb
12.01.2019— | 05.28.2019 |
| J. | TPRN Meeting Attendance Documentation Lia
2018—
Harb Dec 2018-April 2019 | Dec
April |
| K. | Cornerstone of Recovery Documentation of Professionals Aftercare
Meeting Attendance Dec 2018-May 2019 | Dec
2018—
May
2019 |

L. Letters of Support for Lia Harb

Various

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the Board finds that Lia Harb has complied with the terms set forth in the March 13, 2019 Board's Order, Case No. I-2018-1065 and A-2019-0067.

DECISION OF THE BOARD

The Board hereby maintains the indefinite Suspension Order issued to Lia Harb on July 12, 2018. After the effective date of this Order, but no earlier than June 2020, the Board will consider any petition filed by Lia Harb 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:

1. Lia Harb must enter into and adhere to the terms of a **new** contract, signed within thirty days after the effective date of this Order, with the Tennessee Pharmacy Recovery Network (TPRN) for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. Failure to adhere to the terms of the treatment contract will be considered a violation of the Board's Order and subject Lia Harb to potential sanctions up to and including revocation of license. The contract must provide that:
 - i. Random, **observed** urine drug screens shall be conducted at least once each month.
 - j. 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.
 - k. Alcohol and Ethyl Glucuronide (ETG) must be added to the standard urine drug screen.
 - l. 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.
 - m. In the event of a negative diluted screen, a hair sample test must be completed at the cost of Lia Harb in a timeframe consistent with the drug lab's recommended policy, but in any event no later than 12 days after the negative diluted screen.

2. TPRN 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.
 - a. Attendance is required a minimum of three times per calendar week (Sunday through Saturday) on separate days, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - b. The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
3. Lia Harb shall not refuse an employer provided drug or alcohol screen. If the Board becomes aware of any positive drug or alcohol screen results that were obtained in the course of employment or any mechanism other than via the signed contract with ODMHAS, the Board shall treat these results as a violation of the Board's Order and request Lia Harb reappear before the Board for possible additional sanctions, including and up to revocation of license.
4. Lia Harb shall not refuse a breathalyzer or other drug testing requested by law enforcement during the period of suspension. The Board shall treat any such refusal as a violation of the Board's Order and request Lia Harb reappear before the Board for possible additional sanctions, including and up to revocation of license.
5. Lia Harb 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.
6. Lia Harb must provide, in the reinstatement petition, documentation of the following:
 - a. 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.);
 - b. 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;
 - c. Compliance with the terms of this Order.
7. If reinstatement is not accomplished within **three years** of the effective date of this Order, Respondent must also show successful completion of the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination approved by the Board.
8. Any reinstatement shall not occur until such time as any criminal intervention in lieu of conviction has been successfully completed.

9. The Board will not consider any request for deviation from the terms and conditions listed herein until a minimum of three years has passed from the effective date of this order.
10. Any violation of Chapters 2925., 3715., 3719., 4729., of the Ohio Revised Code, any administrative code violation or a violation of any other state or federal law will be considered a violation of this Order resulting in a hearing before the Board and may also result in criminal and/or administrative charges.
11. Lia Harb must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10 of each year of suspension) that include:
 - a. The written report and documentation provided by the treatment program pursuant to the contract, and
 - b. A written description of Lia Harb 's progress towards recovery and what Lia Harb has been doing during the previous three months.
12. Lia Harb must, if her employment is related to the practice of pharmacy, notify her employer of the terms of this Board's Order.
13. Lia Harb must immediately report any violation of the terms of this Order to the Board by contacting legal@pharmacy.ohio.gov. Failure to self-report any violation shall be treated as a violation of this Board's Order and will subject Lia Harb to possible additional sanctions, including and up to revocation of license.
14. Any violation of this Board's Order may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code, including and up to revocation of Lia Harb's license.

Further, the Board hereby grants the State's Motion to Seal the Record in this matter including, but not limited to, all confidential patient health information contained in the record, specifically State's exhibit 9 and Petitioner's exhibits C, D, E and K.

Shawn C. Wilt moved for Findings of Fact; Jennifer M. Rudell seconded the motion. Motion passed (Aye-6/Nay-0).

Jennifer M. Rudell moved for Action of the Board; Curtis L. Passafume seconded the motion. Motion passed (Aye-6/Nay-0).

SO ORDERED.

10:48 a.m.

The Board recessed for break.

10:57 a.m. The Board was joined by Assistant Attorney General Henry Appel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. In the Matter of **Eric Hammond, Dayton, Ohio.**

R-2019-324 Mr. Wilt moved that the Board recess in order to consider the quasi-judicial matters 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. Yarosh and a roll-call vote was conducted by President Weaver as follows: Wilt-yes; Cox-yes; Marchal-yes; Passafume-yes; and Yarosh-yes.

11:30 a.m. The recess ended and the hearing was opened to the public.

R-2019-325 After votes were taken in public session, the Board adopted the following order in the Matter of **Eric Hammond, Dayton, Ohio.**

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2017-1718)

In The Matter Of:

Eric Hammond, R.Ph.
9525 Moorgate Court
Dayton, OH 45458
(License No. 03132069)

INTRODUCTION

The Matter of Eric Hammond came for hearing on June 4, 2019, before the following members of the State of Ohio Board of Pharmacy (Board): Fred M. Weaver, RPh, *Presiding*; Shawn C. Wilt, RPh; Joshua M. Cox, RPh; Megan E. Marchal, RPh; Curtis L. Passafume, Jr., RPh; and Kilee S. Yarosh, RPh.

Jennifer M. Rudell, RPh requested to be recused from the proceedings.

Eric Hammond was represented by Michael Hochwalt. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

SUMMARY OF EVIDENCEState's Witnesses:

1. None

Respondent's Witnesses:

1. Jarrod Grossman—Executive Director of Pharmacists Rehabilitation Organization, Inc.
2. Daniel Freeman—PRO Advocate
3. Eric Hammond—Petitioner

State's Exhibits:

1. Notice Letter
05.25.2017
2. Amended Notice Letter
11.06.2017
3. Board Order
12.28.2018

Respondent's Exhibits:

- | | |
|---|-------------------------|
| A. PRO, Inc. Client Reporting Sheet for Quarterly Report
2019 | January 2019—May |
| B. OHPRO, Org. Test History Report
2019 | July 31, 2017—May 14, |
| C. CPE Monitor Activity Transcript
2019 | March 31, 2017—April 7, |
| D. Letter from Jarrod Grossman, PharmD, RPh; Executive
Director of Pharmacists Rehabilitation Organization, Inc.
2019 | May 19, |
| E. Letter from Daniel Freeman, PharmD
2019 | May 8, |
| F. Letter from Eric Hammond
2019 | April |
| G. Letter from Angela Hammond
2019 | May 20, |
| H. Letter from John Hammond
2019 | May |
| I. Letter from Paula Hammond
2019 | May |

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the Board finds that Eric Hammond has substantially complied with the terms set forth in the Board Order of the State of Ohio Board of Pharmacy, Case No. 2017-1718, dated December 28, 2018.

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 of Ohio Board of Pharmacy hereby lifts the restriction on the pharmacist identification card, No. 2017-1718, held by Eric Hammond, to be employed by or volunteer in a facility where dangerous drugs are present in Ohio subject to a period of probation for five years beginning on the effective date of this Order, with the following conditions:

1. Eric Hammond must enter into and adhere to the terms of a **new** contract, signed within thirty days after the effective date of this Order, with an approved treatment provider or an approved monitoring program for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. Failure to adhere to the terms of the treatment contract will be considered a violation of the Board's Order and subject Eric Hammond to potential sanctions up to and including revocation of license. The contract must provide that:
 - n. Random, **observed** urine drug screens shall be conducted at least once each month.
 - o. 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.
 - p. Alcohol and Ethyl Glucuronide (ETG) must be added to the standard urine drug screen.
 - q. 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.
 - r. In the event of a negative diluted screen, a hair sample test must be completed at the cost of the Eric Hammond in a timeframe consistent with the drug lab's recommended policy, but in any event no later than 12 days after the negative diluted screen.
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.

- c. Attendance is required a minimum of three times per calendar week (Sunday through Saturday) on separate days, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - d. The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- 3. Eric Hammond shall not refuse an employer provided drug or alcohol screen. If the Board becomes aware of any positive drug or alcohol screen results that were obtained in the course of employment or any mechanism other than via the signed contract with ODMHAS, the Board shall treat these results as a violation of the Board's Order and request Eric Hammond reappear before the Board for possible additional sanctions, including and up to revocation of license.
- 4. Eric Hammond shall not refuse a breathalyzer or other drug testing requested by law enforcement during the duration of probation. The Board shall treat any such refusal as a violation of the Board's Order and request Eric Hammond reappear before the Board for possible additional sanctions, including and up to revocation of license.
- 5. Eric Hammond 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:
 - c. The written report and documentation provided by the treatment program pursuant to the contract, and
 - d. A written description of Eric Hammond's progress towards recovery and what Eric Hammond has been doing during the previous three months.
- 6. Other terms of probation are as follows:
 - a. Eric Hammond must meet at least annually with the Board's Probation Committee, the first meeting to be held June 1, 2020.
 - b. The State of Ohio Board of Pharmacy hereby declares that Eric Hammond'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.
 - c. Eric Hammond may not serve as a responsible pharmacist.
 - d. Eric Hammond may not destroy, assist in, or witness the destruction of controlled substances.
 - e. Eric Hammond may not work in a pharmacy more than 40 hours per week or 80 hours over a two-week period.

- f. Eric Hammond must not violate the drug laws of Ohio, any other state, or the federal government.
 - g. Eric Hammond must abide by the rules of the State of Ohio Board of Pharmacy.
 - h. Eric Hammond must comply with the terms of this Order.
 - i. Eric Hammond's license is deemed not in good standing until successful completion of the probationary period.
- 7. Eric Hammond must immediately report any violation of the terms of this probation to the Board by contacting legal@pharmacy.ohio.gov. Failure to self-report any violation shall be treated as a violation of this Board's Order and will subject Eric Hammond to possible additional sanctions, including and up to revocation of license.
 - 8. Any violation of probation or this Board's Order may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code, including and up to revocation of Eric Hammond's license.
 - 9. If Eric Hammond's employment is related to the practice of pharmacy, he must notify employer of the terms of his probation and this Board's Order.

At the conclusion of the probationary period, the Board will issue a notice of opportunity for hearing to Eric Hammond regarding the status of Eric Hammond's probation and whether Eric Hammond has successfully met all terms of probation and may be considered in good standing.

Further, the Board hereby grants the State's Motion to Seal the Record in this matter including, but not limited to, all confidential patient health information contained in the record, specifically Petitioner's exhibits: B and D.

Joshua M. Cox moved for Findings of Fact; Curtis L. Passafume seconded the motion. Motion passed (Aye-5/Nay-0).

Joshua M. Cox moved for Action of the Board; Curtis L. Passafume seconded the motion. Motion passed (Aye-5/Nay-0).

SO ORDERED.

11:32 a.m.

The Board was joined by Assistant Attorney General Henry Appel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. In the Matter of **Robert Gerland, Lakewood, OH.**

R-2019-326

Mr. Wilt moved that the Board recess in order to consider the quasi-judicial matters 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. Rudell and a roll-call vote was conducted by President Weaver as follows: Wilt-yes; Cox-yes; Marchal-yes; Passafume-yes; Rudell-yes; and Yarosh-yes.

12:04 a.m. The recess ended and the hearing was opened to the public.

R-2019-327 After votes were taken in public session, the Board adopted the following order in the Matter of **Robert Gerland, Lakewood, OH.**

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2017-1900)

In The Matter Of:

Robert Gerland, RPh.

2054 Elmwood
Lakewood, OH 44107
(License No. 03-1-19226)

INTRODUCTION

The Matter of Robert Gerland came for hearing on June 4, 2019, before the following members of the State of Ohio Board of Pharmacy (Board): Fred M. Weaver, RPh, *Presiding*; Shawn C. Wilt, RPh; Joshua M. Cox, RPh; Megan E. Marchal, RPh; Curtis L. Passafume, Jr., RPh; Jennifer M. Rudell, RPh; and Kilee S. Yarosh, RPh.

Robert Gerland was not represented by counsel. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

1. None

Respondent's Witnesses:

2. Robert Gerland

State's Exhibits:

- | | |
|----------------------------------|------------|
| 1. Notice Letter 7/25/17 | 07.25.2017 |
| 2. Amended Notice Letter 1/30/18 | 01.30.2018 |
| 3. Settlement Agreement 10/2/18 | 10.02.2018 |
| 4. Evaluation 11/8/18 | 11.08.2018 |

Respondent's Exhibits:

- | | |
|---------------------------------------|-----------------------|
| A. Drug Results Record 5/23/19 | 05.23.2019 |
| B. Test History Report 6/1/18—5/31/19 | 06.01.2018—05.31.2019 |
| C. Test History Report 1/1/18—6/3/19 | 01.01.2018—06.03.2019 |

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the Board finds that Robert Gerland has substantially complied with the terms set forth in the Settlement Agreement with the State of Ohio Board of Pharmacy, Case No. 2017-1900, dated October 2, 2018.

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 of Ohio Board of Pharmacy hereby approves the reinstatement of pharmacist License No. 03-1-19226, held by Robert Gerland to practice pharmacy in Ohio.

Curtis L. Passafume moved for Action of the Board; Kilee S. Yarosh seconded the motion. Motion passed (Aye-6/Nay-0).

SO ORDERED.

R-2019-328

Mr. Wilt 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. Rudell and a roll-call vote was conducted by President Weaver as follows: Wilt-yes; Cox-yes; Marchal-yes; Passafume-yes; Rudell-yes; and Yarosh-yes.

1:14 p.m.

OPC Retail, LLC a Provisional Dispensary Licensee, represented by John Stock and Jeff McCourt and joined by City of Huron Manager Andy White, requested that the Board grant a variance and allow the relocation of their facility, so that they would be in compliance with the City of Huron's medical marijuana zoning regulations.

The Board took the matter under consideration.

1:50 p.m.

Pursuant to Sections 4729.16(E) and 4729.96(B), the State of Ohio Board of Pharmacy was joined by Eric Griffin, *Director of Compliance and Enforcement* for the purpose of considering whether to Order a mental/physical examination in the matter of a pharmacist and whether to consider a summary suspension related to three technicians as authorized by Section 3719.121 of the Ohio Revised Code.

- R-2019-329** After hearing Mr. Griffin discuss the significant facts, Mr. Passafume moved that the Board compel a pharmacist licensee, to submit to a mental and physical examination pursuant to 4729.16(E). The motion was seconded by Ms. Yarosh and approved by the Board: Aye-4, Nay-1, Abstain-1.
- R-2019-330** After hearing Mr. Pyles discuss the significant facts regarding the activities of Scott Motschman, pharmacy technician, Mr. Wilt moved that the Board summarily suspend the pharmacy technician license belonging to Scott Motschman (09-304145), Englewood, Ohio. The motion was seconded by Mr. Passafume and approved by the Board: Aye-6, Nay-0.
- R-2019-331** After hearing Mr. Pyles discuss the significant facts regarding the activities Kellie Pethtel, pharmacy technician, Mr. Cox moved that the Board summarily suspend the pharmacy technician license belonging to Kellie Pethtel (09-200817), Richmond, Ohio. The motion was seconded by Ms. Rudell and approved by the Board: Aye-6, Nay-0.
- R-2019-332** After hearing Mr. Pyles discuss the significant facts regarding the activities of Marnie Cundiff, pharmacy technician, Mr. Wilt moved that the Board summarily suspend the pharmacy technician license belonging to Marnie Cundiff (09-209924), Bucyrus, Ohio. The motion was seconded by Ms. Yarosh and approved by the Board: Aye-6, Nay-0.
- 2:13 p.m.** The Board recessed for a break.
- 2:24 p.m.** The Board was joined by Erin Reed. Ms. Reed Provided the Medical Marijuana Dispensary Control Program Update.
- 2:33 p.m.** Ms. Reed let a discussion on the need to assemble an Ad Hoc committee for reviewing Medical Marijuana health claims.
- R-2019-333** Mr. Cox moved that the Board delegate decisions on Medical Marijuana health claims to Megan Marchal until the Board approved an Ad Hoc committee. The motion was seconded by Mr. Wilt and approved by the Board: Aye-6, Nay-0.
- 2:36 p.m.** The Board was joined by Mr. McNamee and Ms. Wai, who led a discussion on revisions to rules 4729:5-3-13—Temporary Removal of Dangerous Drugs from a Licensed Location, 4729:5-20-01—Veterinary Clinics—Definitions, 4728:5-20-02—Personally Furnishing Dangerous Drugs, 4729:5-20-03—Security and Control of Dangerous Drugs, 4729:5-20-04—Record Keeping, 4729:5-15-01—Animal Shelters—Definitions, 4729:5-15-02—Security and Control of Dangerous Drugs, and 4729:5-15-03—Record Keeping.
- R-2019-334** Mr. Passafume moved that the revisions to 4729:5-3-13, 4729:5-20-01, 4728:5-20-02, 4729:5-20-03, 4729:5-20-04, 4729:5-15-01, 4729:5-15-02, and 4729:5-15-03 be approved for filing with JCARR. The motion was seconded by Ms. Yarosh and approved by the Board: Aye-6, Nay-0.
- 3:15 p.m.** Mr. McNamee and Ms. Wai led a discussion on revisions to rules 4729:7-2-01—Definitions—Pharmacy Compounding 4729:7-2-02—Sterile Compounding Exemptions, 4729:7-2-03—Drugs Compounded in a Pharmacy, and 4729:7-2-04—Record Keeping.

- R-2019-335** Mr. Passafume moved that the revisions to 4729:7-2-01, 4729:7-2-02, 4728:7-2-03 and 4729:7-2-04 be approved for filing with JCARR. The motion was seconded by Mr. Cox and approved by the Board: Aye-6, Nay-0.
- R-2019-336** Mr. Wilt 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 Weaver as follows: Wilt-yes; Cox-yes; Marchal-yes; Passafume-yes; Rudell-yes; Yarosh-yes.
- 3:47 p.m.** Ms. Southard presented the OBOT—Non-Physician Ownership Waiver Request of Stark Recovery Associates.
- R-2019-337** Mr. Cox moved that the Board approve the Waiver Request of Stark Recovery Associates. The motion was seconded by Mr. Passafume and approved by the Board: Aye-6, Nay-0.
- 3:48 p.m.** Ms. Wai presented the Auxiliary labeling—Support Personnel exemption request of Ohio Health Pharmacy Services to the Board for approval.
- R-2019-338** Mr. Passafume moved that the Board deny the Exemption Request of Ohio Health Pharmacy Services. The motion was seconded by Mr. Cox and denied by the Board: Aye-6, Nay-0.
- 3:51 p.m.** Mr. McNamee and Ms. Wai led a discussion on revisions to rules 4729:5-5-04—Record Keeping, 4729:5-5-05—Prescription Format Requirements, 4729:5-5-07—Patient Profiles, 4729:5-5-09—Patient Counseling, 4729:5-5-11—Prescription Copy, 4729:5-5-12—Partial Dispensing of Schedule II Controlled Substances, 4729:5-3-13—Protocols and Pre-Printed Order for Medication Administration, 4729:5-3-11—Transmission of Outpatient Prescriptions, 4729:5-16-01—Laboratories-Definitions, 4729:5-16-02—Security, Control and Storage of Dangerous Drugs, 4729:5-16-03—Record Keeping, 4729:3-1-01—Definitions, 4729:2-1-01—Definitions-Pharmacy Interns, 4729:5-5-06—Labeling of Drugs Dispensed on Prescription, 4729:5-10-01—Definitions-Drug Repository Programs, 4729:5-10-02—Eligibility Requirements for a Pharmacy, Hospital, or Nonprofit, 4729:5-10-03—Donating Drugs, 4729:5-10-04—Eligible Drugs, 4729:5-10-05—Eligibility Requirements to Receive Drugs, 4729:5-10-06—Donor and Recipient Forms, 4729:5-10-07—Records Keeping and Handling Fee, 4729:6-1-01—Definitions-Distributors of Dangerous Drugs, 4729:10-1-01—Definitions-Prescription Drug Collection, 4729:10-1-02—Authorized Collectors, 4729:10-1-03—Law Enforcement Agencies, 4729:10-1-04—Procedure for Destruction of Collected Drugs, 4729:1-1-01—Definitions-Pharmacists, 4729:5-5-03—Filing and Storage of Prescriptions, and 4729:5-5-10—Manner of Processing a Prescription.
- R-2019-339** Mr. Passafume moved that the revisions to 4729:5-5-04, 4729:5-5-05, 4729:5-5-07, 4729:5-5-09, 4729:5-5-11, 4729:5-5-12, 4729:5-3-13, 4729:5-3-11, 4729:5-16-01, 4729:5-16-02, 4729:5-16-03, 4729:3-1-01, 4729:2-1-01, 4729:5-5-06, 4729:5-10-01, 4729:5-10-02, 4729:5-10-03, 4729:5-10-04, 4729:5-10-05, 4729:5-10-06, 4729:5-10-07, 4729:6-1-01, 4729:10-1-01, 4729:10-1-02, 4729:10-1-03, 4729:10-1-04, , 4729:1-1-01, 4729:5-5-03, and 4729:5-5-10 be approved for filing with JCARR. The motion was seconded by Ms. Yarosh and approved by the Board: Aye-6, Nay-0.

R-2019-340 Mr. Weaver announced the following Settlement Agreement has been signed by all parties and is now effective:

**IN THE MATTER OF:
Case No. A-2019-0042
Cody Agne**

9780 Foxhound Dr., Apt. 3B
Miamisburg, OH 45342

PERMANENTLY WITHDRAWN Registration No. 09-203080

SETTLEMENT AGREEMENT WITH THE STATE OF OHIO BOARD OF PHARMACY

This Settlement Agreement (Agreement) is entered into by the State of Ohio Board of Pharmacy (Board) and Cody Agne, for the purpose of resolving all issues between the parties relating to the Board investigation of Cody Agne involving In the Matter of Cody D. Agne, Case No. D39350 related to sexual assault offenses. Together, the Board and Cody Agne are referred to hereinafter as "the parties."

JURISDICTION

1. Pursuant to Section 4729.96 of the Ohio Revised Code and the rules adopted thereunder, the Board has the authority to revoke, suspend, restrict, limit or refuse to grant or renew any registration issued pursuant to Sections 4729.90 of the Ohio Revised Code or reprimand or place the holder of the registration on probation.
2. Cody Agne applied for a registered pharmacy technician under pending registration number 09-203080.

FACTS

1. On Cody Agne's application submitted on or about January 26, 2018, he answered "Yes" to the question inquiring whether he has any other record of arrest (not related to drug charges), charges, or have a conviction of a felony, misdemeanor or traffic violation (even if dismissed or sealed or the equivalent thereof in another jurisdiction). On or about June 19, 2007, you were charged as a delinquent child at the age of seventeen for two counts of Rape, felonies of the first degree, two counts of Gross Sexual Imposition, felonies of the fourth degree, Sexual Battery, a felony of the third degree and Importuning, a felony of the fourth degree, in the Greene County Juvenile Court. On or about October 3, 2008, the final disposition was entered for your admission to Importuning, a felony of the fourth degree and Gross Sexual Imposition, a felony of the third degree. The Court ordered you to have no contact with children under the age of six (6) years and under and required you to attend a Sexual Offender Program. As a result of this adjudication, you were required to register as a Tier II sex offender for a period of ten (10) years. In the Matter of Cody D. Agne, Case No. D39350.

2. On or about January 31, 2019, the Board sent a Summary Suspension/Notice of Opportunity for Hearing to Cody Agne, which outlined the allegations and provided notice of his right to a hearing, his rights in such hearing, and his right to submit contentions in writing.

WHEREFORE, the parties desire to resolve the issues relating to the above-referenced findings without resorting to further administrative or judicial proceedings.

TERMS

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Cody Agne neither admits nor denies the allegations stated in the Summary Suspension/Notice of Opportunity for Hearing letter dated January 31, 2019; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. **CODY AGNE PERMANENTLY AND VOLUNTARILY WITHDRAWS HIS APPLICATION TO THE STATE OF OHIO BOARD OF PHARMACY FOR REGISTRATION TO ENGAGE IN PERMISSIBLE ACTIVITIES OF A REGISTERED PHARMACY TECHNICIAN, REGISTRATION NO. 09-203080, WITH DISCIPLINE PENDING.**
4. **Cody Agne agrees to never reapply for any license or registration over which the State of Ohio Board of Pharmacy has jurisdiction, including those set forth in Chapters 3719., 3796., 4729., or 4752. of the Revised Code.**
5. Cody Agne agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
6. Cody Agne understands that he has the right to be represented by counsel for review and execution of this Agreement.
7. Cody Agne agrees and acknowledges that this Board disciplinary action must be disclosed to the proper licensing authority of any state or jurisdiction in which he currently holds a professional license or registration.
8. Cody Agne withdraws his request for a hearing; waives an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code; and waives any right to an appeal.
9. This Agreement may be executed in counterparts or facsimiles, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

10. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
11. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.
12. This Agreement shall become effective upon the date of the Board President's signature below.

R-2019-341 Mr. Weaver announced the following Settlement Agreement has been signed by all parties and is now effective:

**IN THE MATTER OF:
CASE NO. I- 2018-1334
A-2019-0056
License No. 01-2176500**

**Cantrell Drug Company, Inc.
c /o James L. McCarley, Jr.
7321 Cantrell Road
Little Rock, AR 72207**

SETTLEMENT AGREEMENT WITH THE STATE OF OHIO BOARD OF PHARMACY

This Settlement Agreement (Agreement) is entered into by the State of Ohio Board of Pharmacy (Board) and Cantrell Drug Company Inc., for the purpose of resolving all issues between the parties relating to the Board investigation of the complaint for injunction entered against you by the United States of America on behalf of the Federal Drug Administration (FDA) in the United States District Court for the Eastern District of Arkansas. Together, the Board and Cantrell Drug Company, Inc. are referred to hereinafter as "the parties."

JURISDICTION

1. Pursuant to Section 4729.57 of the Ohio Revised Code and the rules adopted thereunder, the Board has the authority to suspend, revoke, or refuse to grant or renew any license issued pursuant to Section 4729.54 of the Ohio Revised Code.
2. Cantrell Drug Company, Inc. is a licensed Wholesale Distributor of Dangerous Drugs under license number 012176500.

FACTS

1. On or about March 5, 2018, the Board initiated an investigation of Cantrell Drug Company, Inc., Wholesale Distributor of Dangerous Drugs license number 012176500, related to Cantrell Drug Company, Inc.'s consent decree of permanent injunction entered against you by the United States of America on behalf of the Federal Drug Administration (FDA) in the United States District Court for the Eastern District of Arkansas on February 28, 2018. The complaint was based in large part on your failure to address items identified in a series of forms FDA-483 issued to Cantrell in October 2016 and June 2017. On or about April 19, 2018, a Consent Decree of Permanent Injunction was issued against you in the U.S. District Court of the Eastern District of Arkansas. The Permanent Injunction prohibited you from manufacturing, processing, packing, holding or distributing drugs until you comply with the FD&C Act and FDA regulation, in addition to several other requirements.
2. On or about May 2, 2018 the Board sent a Summary Suspension/Notice of Opportunity for Hearing to Cantrell Drug Company, Inc., which outlined the allegations and provided notice of its right to a hearing, its rights in such hearing, and its right to submit contentions in writing.
3. On or about May 17, 2018, Cantrell Drug Company, Inc., by and through its attorney S. Graham Catlett, timely requested a hearing.

WHEREFORE, the parties desire to resolve the issues relating to the above-referenced findings without resorting to further administrative or judicial proceedings.

TERMS

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Cantrell Drug Company, Inc. neither admits nor denies the allegations stated in the Summary Suspension/Notice of Opportunity for Hearing letter dated May 2, 2018; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.

3. Cantrell Drug Company, Inc. voluntarily surrenders to the State of Ohio Board of Pharmacy its Terminal Distributor of Dangerous Drugs license, number 01-2176500, with the State of Ohio Board of Pharmacy, with discipline pending.
 4. Cantrell Drug Company, Inc. may not reapply for any license issued by the State of Ohio Board of Pharmacy pursuant to Chapters 3719., 3796., 4729., or 4752. of the Revised Code unless and until there is a satisfactory inspection by the National Association of Boards of Pharmacy's (NABP) Verified-Accredited Wholesale Distributors Program (VAWD) or by agents from the Board. Cantrell agrees to bear the expense of either inspection.
 5. Cantrell Drug Company, Inc. agrees and acknowledges that this Board disciplinary action must be disclosed to the proper licensing authority of any state or jurisdiction, as required by any such state or jurisdiction, in which it currently holds a professional license.
 6. Cantrell Drug Company, Inc. agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
 7. Cantrell Drug Company, Inc. understands that it has the right to be represented by counsel for review and execution of this agreement.
 8. This Agreement is binding upon any and all successors, assigns, affiliates, and subsidiaries of the parties or any other corporation through whom or with whom Cantrell Drug Company, Inc. will operate.
 9. Cantrell Drug Company, Inc. waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code and waives any right to an appeal.
 10. This Agreement may be executed in counterparts or facsimiles, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
 11. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
 12. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.
 13. This Agreement shall become effective upon the date of the Board President's signature below.
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- R-2019-342** Mr. Wilt moved that the Board Meeting Minutes of May 6-7, 2019 of be approved as written. The motion was seconded by Mr. Cox and approved by the Board: Aye-6, Nay-0.
- R-2019-343** Mr. Wilt moved that the Board Approve the proposed Board Meeting Dates for 2020 calendar year. The motion was seconded by Ms. Marchal and approved by the Board: Aye-6, Nay-0.
- 4:57 p.m.** Mr. Wilt moved that the Board approve A Resolution for Curtis A. Passafume. The motion was seconded by Ms. Yarosh and approved by the Board: Aye-6, Nay-0. The following resolution was adopted by the Board:
-

WHEREAS , Curtis L. Passafume, Jr., has served the citizens of Ohio with distinction

as a Member of the State of Ohio Board of Pharmacy following his appointment by Governor John R. Kasich in 2015.

WHEREAS, during his commendable term in this appointment, Mr. Passafume maintained the highest professional standards and demonstrated the admirable traits of

integrity, intelligence, and impartiality in matters concerning the profession of pharmacy; therefore

BE IT RESOLVED that we, the Members of the State of Ohio Board of Pharmacy,

in its one hundred thirty-fifth year,

do hereby express our profound appreciation to Curtis L. Passafume, Jr. for his service and recognize him for his commitment to health and safety of the citizens of Ohio.

- 5:00 p.m.** Mr. Weaver administered the Oath of Office to President-elect, Shawn C. Wilt.

Oath of President

I, Shawn Wilt, as President of the State of Ohio Board of Pharmacy,
do solemnly swear to uphold the Constitution of the United States and the State of Ohio;
to impartially enforce the laws governing the profession of pharmacy and the legal
distribution of drugs in the state of Ohio; and carry out the responsibilities of the Board
as mandated by the laws of the State of Ohio without bias or prejudice, so help me
God.

5:01 p.m. Mr. Weaver administered the Oath of Office to Vice President-elect, Jennifer M. Rudell.

Oath of Vice President

I, Jennifer Rudell, as Vice President of the State of Ohio Board of Pharmacy, do solemnly swear to uphold the Constitution of the United States and the State of Ohio; to impartially enforce the laws governing the profession of pharmacy and the legal distribution of drugs in the state of Ohio; and carry out the responsibilities of the Board as mandated by the laws of the State of Ohio without bias or prejudice, so help me God.

R-2019-344

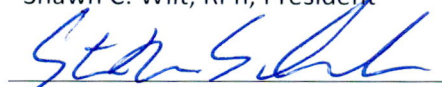
Mr. Wilt moved that the Board go into Executive Session to consider the investigation of charges or complaints against a licensee, confer with Board counsel regarding a pending or imminent court action and to discuss matters required to be confidential by law pursuant to Section 121.22(G)(1), (3) & (5) of the Ohio Revised Code, at the conclusion of which the Board would adjourn. The motion was seconded by Mr. Passafume and a roll-call vote was conducted by President Weaver as follows: Wilt-yes; Cox-yes; Marchal-yes; Passafume-yes; Rudell-yes; Yarosh-yes.

5:57 p.m. Executive Session concluded and the meeting adjourned.



Shawn C. Wilt, RPh, President

Date: 7-10-19



Steven W. Schierholt, Executive Director

Date: 7/11/19