

Minutes of the March 2-4, 2015
Meeting of the Ohio State Board of Pharmacy

Monday, March 2, 2015

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:

Michael A. Moné, R.Ph., *President*; Kilee S. Yarosh, 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 Fred M. Weaver, R.Ph.

Also present were Steven Schierholt, *Executive Director*; Kevin Mitchell, *Assistant Executive Director*; Eric Griffin, *Compliance and Enforcement Supervisor*; Chad Garner, *Director of OARRS*; and Nicole Dehner, *Chief Legal Counsel*.

10:01 a.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 **Lloyd Neal Fisk, R.Ph.**, Pickerington, Ohio.

10:40 a.m. The hearing ended and the record was closed.

Ms. Yarosh 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. Ferris and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Marchal – yes; Weaver – yes and Yarosh – yes.

10:48 a.m. The recess ended and the hearing was opened to the public.

R-2015-249 After votes were taken in public session, the Board adopted the following order in the matter of **Lloyd Neal Fisk, R.Ph.**, Pickerington, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Case No. 2014-1438)

In The Matter Of:

Lloyd Neal Fisk, R.Ph.
7490 Blacklick Eastern Road
Pickerington, Ohio 43147
(License No. 03-2-19476)

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 Lloyd Neal Fisk originally licensed in the State of Ohio on July 30, 1992, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio. Records further reflect that Lloyd Neal Fisk was previously disciplined by this Board on September 10, 2007, April 10, 2008, June 17, 2009, July 11, 2012 and December 7, 2012.

(2) Lloyd Neal Fisk is addicted to or abusing drugs and/or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: in 2008, the Board indefinitely suspended his license to practice pharmacy due in part to his addiction. In June of 2009, the Board reinstated his license with certain conditions. In 2012, his license was again suspended due to a positive drug screen. The Board subsequently extended your probation. Lloyd Neal Fisk is currently on probation pursuant to the Board's Order issued in December 7, 2012. On or around April 29, 2014, he admitted addiction to oxycodone, admitted to generating a false prescription on RX #N23133528 for 120 oxycodone HCL 15 mg. tablets, admitted illegal possession of 104 oxycodone HCL 15 mg tablets, admitted to stealing 5 oxycodone/APAP 7.5/325 mg tablets, and admitted to stealing 8 oxycodone/APAP 10/325 mg. tablets.

(3) Lloyd Neal Fisk did, on or around April 18, 2014, intentionally create and/or knowingly possess a false or forged prescription, to wit: he created a forged prescription for RX # N23133528 for 120 oxycodone HCL 15 mg. tablets, a controlled substance, at Town Drug Pharmacy.

(4) Lloyd Neal Fisk did, on or around April 29, 2014, knowingly possess a controlled substance, 104 oxycodone HCL 15 mg tablets, for which he had no legitimate prescription.

(5) Lloyd Neal Fisk did, on or around March 17, 2014, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Arensberg Pharmacy #1, by deception, to wit: he has admittedly stole 5 oxycodone/APAP 7.5/325 mg. tablets.

(6) Lloyd Neal Fisk did, on or around March 24, 2014, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Lonsinger Pharmacy, by deception, to wit: he has admittedly stole 8 oxycodone/APAP 10/325 mg. tablets.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (3) through (6) of the Findings of Fact constitutes being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraphs (3) through (6) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

(3) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

(4) Further, as a result of the evidence and testimony presented, the State Board of Pharmacy concludes that paragraphs (3) and (6) of the Findings of Fact constitute being guilty of willfully violating of Chapter 2925. of the Ohio Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Lloyd Neal Fisk on May 15, 2014.

Pursuant to Section 4729.16 of the Ohio Revised Code, and pursuant to Section 4729-9-01(E) of the Ohio Administrative Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Lloyd Neal Fisk as follows:

(1) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law, the State Board of Pharmacy hereby **revokes permanently** the pharmacist identification card, No. 03-2-19476, held by Lloyd Neal Fisk effective as of the date of the mailing of this Order.

(2) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law, the State Board of Pharmacy hereby **revokes permanently** the pharmacist identification card, No. 03-2-19476, held by Lloyd Neal Fisk effective as of the date of the mailing of this Order.

(3) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law, the State Board of Pharmacy hereby **revokes permanently** the pharmacist identification card, No. 03-2-19476, held by Lloyd Neal Fisk effective as of the date of the mailing of this Order.

(4) On the basis of the Findings of Fact and paragraph (4) of the Conclusions of Law, the State Board of Pharmacy hereby **revokes permanently** the pharmacist identification card, No. 03-2-19476, held by Lloyd Neal Fisk effective as of the date of the mailing of this Order.

Lloyd Neal Fisk, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his license to practice (pocket ID card) and registration (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.

Ms. Yarosh moved for Findings of Fact; Ms. Marchal seconded the motion. Motion passed (Aye-7/Nay-0).

Ms. Yarosh moved for Conclusions of Law; Ms. Huwer seconded the motion. Motion passed (Aye-7/Nay-0).

Mr. Kolezynski moved for Action of the Board; Mr. Weaver seconded the motion. Motion passed (Aye-7/Nay-0).

SO ORDERED.

10:51 a.m. The Board recessed briefly.

10:57 a.m. The meeting reconvened in Room South B&C.

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 **Center for Optimal Vitality**, Cincinnati, Ohio.

11:18 a.m. The hearing ended and the record was closed.

Mr. Kolezynski 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. Marchal and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Marchal – yes; Weaver – yes and Yarosh – yes.

11:27 a.m. The recess ended and the hearing was opened to the public.

R-2015-250 After votes were taken in public session, the Board adopted the following order in the matter of **Center for Optimal Vitality**, Cincinnati, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Case No. 2013-1868)

In The Matter Of:

Center for Optimal Vitality
c/o Subramanya K. Prasad, M.D.
8837 Chapel Square Land, Suite A
Cincinnati, Ohio 45249

INTRODUCTION

The Matter of Center for Optimal Vitality came for hearing on March 2, 2015, before the following members of the Board: Michael A. Moné, 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.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

Center for Optimal Vitality was not present nor represented by Counsel. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

1. David Gallagher, Ohio State Board of Pharmacy

Respondent's Witnesses:

None

State's Exhibits:

- | | | |
|-----|---|----------|
| 1. | Proposal to Deny/Notice of Opportunity for Hearing | 04-11-14 |
| 1A. | Procedural | |
| 2. | Terminal Distributor Change of Responsible Person Notice | 10-07-13 |
| 3. | Copy of United States of America v. Subramanya Prasad
Criminal Case No. 07-CR-2016-IEG, USDC S.D. Cal., Plea Agreement | 10-18-10 |
| 4. | Copy of State Medical Board of Ohio Documents
RE: Subranmanya K. Prasad, M.D. | 04-13-11 |
| 4A. | Copy of in RE: The License to Practice Medicine in the
Commonwealth of Kentucky held by Subranmanya K. Prasad, M.D. | 03-13-08 |

Respondent's Exhibits:

None

FINDINGS OF FACT

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

(1) Records of the Board of Pharmacy indicate that on or about October 7, 2013 Subramanya K. Prasad, M.D. was the responsible person for Center for Optimal Vitality, located at, 8837 Chapel Square Land, Suite A, Cincinnati, Ohio 45249 and that on said date, Center for Optimal Vitality submitted an application for registration as a Terminal Distributor of Dangerous Drugs.

(2) Subramanya K. Prasad, M.D. did, on or about October 7, 2013, submit a Terminal Distributor Change of Responsible Person Notice to the Ohio State Board of Pharmacy, and answered "yes" to both of the following questions: "Do you, as the person accepting responsibility by signing this form, have charges pending or have you EVER had a conviction for a felony or a misdemeanor other than a minor traffic violation (even if expunged or sealed)?" and "Have you, as the person accepting responsibility by signing this form, ever been the subject of disciplinary action by any state or federal agency?," to wit: Subramanya K. Prasad provided with his Notice documentation that reveals he entered into a Plea Agreement with the federal Government on October 8, 2010, in which he agreed to plead guilty to making a False Statement to the United States Food and Drug Administration ("FDA") in violation of Title 18 U.S.C. § 1001 and 18 U.S.C. § 2, in exchange for the Government's dismissal of charges contained in Indictment No. 07-CR-2016-IEG. United States of America v. Subramanya K. Prasad, U.S.D.C. S.D. Cal., Case No. 07-CR-2016-IEG, Plea Agreement, (October 18, 2010). As a factual basis, the Agreement indicates that he was involved with Affpower Enterprise, an organization that used the Internet to distribute and dispense prescription pharmaceuticals to customers located throughout the United States unlawfully. Subramanya K. Prasad, M.D. was sentenced to one year of probation, which was successfully terminated on October 17, 2011, and was fined a mandatory special assessment of \$100.00. Further, he provided with his Notice a summary of disciplinary action taken against his medical license by the Kentucky Board of Medical Licensure and the State Medical Board of Ohio. Prior to entering into the Agreement with the Government in October 2010, he surrendered his medical license in Kentucky pursuant to an Agreed Order of Surrender on March 13, 2008, based on his involvement in the federal Internet prescribing case previously mentioned herein. In Re: The License to Practice Medicine in the Commonwealth of Kentucky held by Subramanya K.K. Prasad, M.D., License No. 36444, Florence Urgent Care, 8820 Bankers Street, Florence, Kentucky 41042, Case No. 1148, Agreed Order of Surrender, Commonwealth of Kentucky Board of Medical Licensure. The Agreed Order indicates that his role with Affpower Enterprise was to review and approve orders for prescription drugs. In a four month period, from March to June of 2006, he approved over 30,790 orders for prescription drugs from Affpower customers. On October 8, 2008, the State Medical Board of Ohio permanently revoked his medical license based on his Agreed Surrender in Kentucky. In the Matter of

Ms. Ferris provided the Nursing Board CPG meeting report.

Mr. Mitchell provided the Licensing update.

Mr. Griffin provided the Compliance and Enforcement update.

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

Ms. Payer provided the AG report.

R-2015-251 The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **Ahsan Usmani, M.D.** (35.087875) Cincinnati, Ohio, be the responsible person for the following pain management clinics:

Comprehensive Headache and Pain Solutions, LLC (PMC), Cincinnati (02-1771200)
Comprehensive Headache and Pain Solutions, LLC (PMC), Trotwood (02-2138550)

After discussion, Ms. Ferris moved that the Board approve the specific request for a period of two years. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 4/Nay – 3.

2:13 p.m. Mr. Schierholt provided the Executive Director's report.

2:17 p.m. Ms. Ferris moved that the Board go into Executive Session to consider the employment (dismissal, discipline, promotion, demotion, compensation, appointment) of a public employee and 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 Mr. Weaver and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Marchal – yes; Weaver – yes and Yarosh – yes.

4:09 p.m. The meeting reconvened in Room South B&C.

The Board recessed for the day.

Tuesday, March 3, 2015

8:30 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:

Michael A. Moné, R.Ph., *President*; Kilee S. Yarosh, 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 Fred M. Weaver, R.Ph.

8:43 a.m. 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 **Heather Gaal, R.Ph.** (03-3-22051) Navarre, Ohio..

9:26 a.m. The hearing ended and the record was closed.

Ms. Ferris 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 Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Marchal – yes; Weaver – yes and Yarosh – yes.

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

R-2015-252 After votes were taken in public session, the Board adopted the following order in the matter of **Heather Gaal, R.Ph.** (03-3-22051) Navarre, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY
(Case Number 2013-1902)

In The Matter Of:

Heather Christine Gaal, R.Ph.
124 Ryan Ridge, NE
Navarre, Ohio 44662
(R.Ph. No. 03-3-22051)

INTRODUCTION

The Matter of Heather Christine Gaal came for hearing on March 3, 2015, before the following members of the Board: Michael A. Moné, 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.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

Heather Christine Gaal requested a hearing on April 9, 2014 but subsequently withdrew her request on February 25, 2015. (See Respondent’s exhibit A and State’s exhibit 1J). Heather Christine Gaal was not present nor represented by Counsel. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

1. David Gallagher, Ohio State Board of Pharmacy

Respondent's Witnesses:

None

State's Exhibits:

1. Summary Suspension/Notice of Opportunity for Hearing 03-12-14
- 1A.-J. Procedurals
2. OSBP Order RE: Heather Christine Gaal 05-14-08
3. Discount Drug Mart-Loss Prevention Report 10-11-13
4. Notarized Statement of Jeffrey L. Kistler 04-16-14
5. Store #30 Pharmacy Schedules for Jeff, Heather, Brian and Beth 10-15-13 through 03-03-14
6. Notarized Statement of Dr. Diane Kreptowski 02-13-14
7. Patient Profile for Heather Gaal, 10-01-13 through 03-03-14

Respondent's Exhibits:

- A. Letter from Heather Christine Gaal 02-26-14

FINDINGS OF FACT

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

(1) Records of the Board of Pharmacy indicate that Heather Christine Gaal was originally licensed in the State of Ohio on October 16, 1996, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio. Records further reflect that you were previously disciplined by this Board on May 14, 2008.

(2) Heather Christine Gaal is addicted to or abusing drugs or alcohol and/or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy, to wit: she has admitted that she is addicted to the use of controlled substances. She has admitted stealing drugs from Discount Drug Mart #30, where she is an employee.

(3) Heather Christine Gaal did, on or around February 26, 2014, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Discount Drug Mart #30, beyond the express or implied consent of the owner, to wit: she admitted to stealing oxycodone/APAP 5/325 mg. tablets during her shift while practicing pharmacy.

(4) Heather Christine Gaal did, on or around February 26, 2014, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Discount Drug Mart #30, beyond the express or implied consent of the owner, to wit: she admitted to stealing oxycodone/APAP 7.5/325 mg. tablets during her shift while practicing pharmacy.

(5) Heather Christine Gaal did, on or around February 26, 2014, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Discount Drug Mart #30, beyond the express or implied consent of the owner, to wit: she removed oxycodone/APAP 10/325 mg. tablets during her shift while practicing pharmacy.

(6) Heather Christine Gaal did, on or about April 8, 2013, by deception, procures the dispensing of a dangerous drug, to wit: she knowingly obtained a prescription for OxyContin 10mg in violation of her patient contract with her physician. Specifically, she failed to inform her prescribing physician of an existing and overlapping opiate prescription written by another physician.

(7) Heather Christine Gaal did, on or about March 21, 2013, by deception, procures the dispensing of a dangerous drug, to wit: she knowingly obtained a prescription for Percocet 10mg in violation of her patient contract with her physician. Specifically, she failed to inform her prescribing physician of an existing and overlapping opiate prescription written by another physician.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (3) through (7) of the Findings of Fact constitute being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraphs (3) through (7) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

(3) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being addicted to drugs or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

(4) Further, as a result of the evidence and testimony presented, the State Board of Pharmacy concludes that paragraphs (6) and (7) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and

abetting the violation of Chapter 2925. of the Ohio Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Heather Christine Gaal on March 12, 2014.

Pursuant to Section 4729.16 of the Ohio Revised Code, and pursuant to Section 4729-9-01(E) of the Ohio Administrative Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Heather Christine Gaal as follows:

(1) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-3-22051, held by Heather Christine Gaal effective as of the date of the mailing of this Order.

(2) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-3-22051, held by Heather Christine Gaal effective as of the date of the mailing of this Order.

(3) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-3-22051, held by Heather Christine Gaal effective as of the date of the mailing of this Order.

(4) On the basis of the Findings of Fact and paragraph (4) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-3-22051, held by Heather Christine Gaal effective as of the date of the mailing of this Order.

Heather Christine Gaal, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return her license to practice (pocket ID card) and registration (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.

Ms. Yarosh moved for Findings of Fact; Ms. Huwer seconded the motion. Motion passed (Aye-7/Nay-0).

Ms. Huwer moved for Conclusions of Law; Ms. Ferris seconded the motion. Motion passed (Aye-7/Nay-0).

Ms. Marchal moved for Action of the Board; Mr. Cain seconded the motion. Motion passed (Aye-7/Nay-0).

SO ORDERED.

10:15 a.m. Mr. McNamee provided the Legislative Update.

R-2015-253 Mr. Kolezynski moved that immunization Rules 4729-5-36, 5-37 and 5-38 be approved for CSI and filing with JCARR. The motion was seconded by Mr. Weaver and approved by the Board: Aye – 7.

R-2015-254 Ms. Marchal moved that Rule 4729-5-23 be approved for CSI and filing with JCARR. The motion was seconded by Ms. Yarosh and approved by the Board: Aye – 7.

R-2015-255 Ms. Huwer moved that Rule 4729-16-04 be approved for refile with JCARR. The motion was seconded by Ms. Yarosh and approved by the Board: Aye – 7.

R-2015-256 After discussion Mr. Kolezynski moved that the adoption of the 4729-11 Rules packet be approved for filing with JCARR. The motion was seconded by Mr. Cain and approved by the Board: Aye – 7.

R-2015-257 After discussion Mr. Cain moved that 4729-6-19 be approved. The motion was seconded by Ms. Marchal and approved by the Board: Aye – 7.

10:46 a.m. Ms. Ferris 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 Mr. Weaver and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Marchal – yes; Weaver – yes and Yarosh – yes.

11: 29 a.m. The meeting reconvened in Room South B&C.

11:30 a.m. The Board recessed for lunch.

1:30 p.m. The Board convened 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*:

Margaret Adjei	Texas
Jillian Nicole Baer	New Jersey
Micah Paul Benford	Kentucky
Timotiwas E. Gebreyes	Indiana

James A. Gish	Kentucky
Timothy W. Gordon	Florida
Drew Holmes	West Virginia
Jaclyn R. Hubbard	Indiana
Eddie Khoriaty	Florida
Naorin Motalib	Kentucky
Anthony Ornduff	Kentucky
Stephanie Pitts	Michigan
Donald Anthony Sublett	Kentucky

1:35 p.m. The Board recessed for the day.

Wednesday, March 4, 2015

8:30 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:

Michael A. Moné, R.Ph., *President*; Kilee S. Yarosh, 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 Fred M. Weaver, R.Ph.

R-2015-258 Mr. Kolezynski moved that the Board Minutes of February 2-4, 2015, be approved as amended. The motion was seconded by Mr. Weaver and approved by the Board:
Aye – 6/Abstain – 1.

R-2015-259 Ms. Yarosh moved that the Board Conference Call Minutes of February 22, 2015, be approved as written. Ms. Marchal seconded the motion and it was approved by the Board: Aye – 4/Abstain – 3.

R-2015-260 Mr. Moné announced the following Settlement Agreement has been signed by all parties and is now effective.

IN THE MATTER OF:
CASE NO. [2013-1305]
Medi-Stat RX
110 East Azalea Avenue
Foley, AL 36535
Terminal Distributor No. 02-2080100

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

This Settlement Agreement (“Agreement”) is entered into by the Ohio State Board of Pharmacy (“OSBP”) and Medi-Stat RX, for the purpose of resolving all issues between the parties relating to the OSBP investigation of making a false statement or knowingly

swear or affirm the truth of a false statement previously made, with purpose to secure the issuance of a license or registration. Together, OSBP and Medi-Stat RX 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 OSBP 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 to a terminal distributor of dangerous drugs.
2. Pursuant to Section 4729.57 of the Ohio Revised Code, the OSBP may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Revised Code for a similar offense or one thousand dollars if the acts committed have not been classified as an offense by the Revised Code for violation of any of the enumerated grounds of Section 4729.57 of the Ohio Revised Code.
3. Medi-Stat RX is a licensed terminal distributor of dangerous drugs under Number 02-2080100.

FACTS

1. On or about March 30, 2013, the OSBP initiated an investigation of Medi-Stat RX, Terminal Distributor Number 02-2080100, related to Medi-Stat RX's false statement or knowingly swear or affirm the truth of a false statement previously made, with purpose to secure the issuance of a license or registration.
2. On or about May 19, 2015, the OSBP sent a Notice of Opportunity for Hearing to Medi-Stat RX, 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.

WHEREFORE, the parties desire to resolve the issues relating to the above-referenced findings without resort 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. Medi-Stat RX neither admits nor denies the allegations stated in the Notice of Opportunity for hearing letter dated May 19, 2014; however, the OSBP has evidence sufficient to sustain the allegations and hereby adjudicates the same.

3. Medi-Stat RX agrees to pay to the OSBP the amount of one thousand dollars (\$1,000), by means of a cashier's check made payable to "Treasurer, State of Ohio," mailed with the enclosed form to the OSBP, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.
 4. Medi-Stat RX agrees to comply with all federal and state requirements related to Terminal Distributors of Dangerous Drugs, including but not limited to, Ohio Revised Code Chapter 4729. and the Rules adopted thereunder, Chapter 3719. and the Rules adopted thereunder, Chapter 3715. and the Rules adopted thereunder as well as the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301 and Chapter 21, Section 360 of the United States Code, and Section 207.20 of the Code of Federal Regulations. Any violation by Medi-Stat RX of the terms of one or more federal or state requirements may constitute sufficient grounds for further enforcement action related to any licenses granted to Medi-Stat RX by the OSBP and will NOT discharge Medi-Stat RX from any obligation under the terms of this Agreement.
 5. Medi-Stat RX agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
 6. Medi-Stat RX understands that it has the right to be represented by counsel for review and execution of this agreement.
 7. 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 Medi-Stat RX will operate.
 8. 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.
 9. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
 10. 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.
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R-2015-261

Mr. Moné announced the following Settlement Agreement has been signed by all parties and is now effective.

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Case No. 2012-1451)

In the Matter of:

Mark Allen, M.D.
10966 Lawndale Drive
Parma Heights, Ohio 44130

This Settlement Agreement is entered into by and between Mark Allen, M.D. and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Mark Allen, M.D enters into this Agreement being fully informed of his rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel, the right to a formal adjudication hearing on the issues contained herein, the right to appeal. Mark Allen, M.D acknowledges that by entering into this Agreement he has waived his rights under Chapter 119. of the Revised Code.

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

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Mark Allen, M.D, knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

(A) Mark Allen, M.D.'s request to withdraw the application submitted on or about February 29, 2012 for Registration as a Terminal Distributor of Dangerous Drugs with a Pain Management Clinic Classification is hereby approved.

(B) Mark Allen, M.D. agrees to never reapply in the state of Ohio for registration as a Terminal Distributor of Dangerous Drugs with a Pain Management Clinic Classification as defined under Chapter 119. of the Ohio Revised Code until and unless the legal requirements for such licensure in Ohio change.

(C) Mark Allen, M.D. agrees to never reapply in the state of Ohio for registration as a Terminal Distributor of Dangerous Drugs or a Wholesale Distributor of Dangerous Drugs as defined under Chapter 119. of the Ohio Revised Code until and unless the legal requirements for such licensure in Ohio change.

(D) Mark Allen, M.D. agrees to never be named as Responsible Person at a Pain Management Clinic in Ohio.

Mark Allen, M.D acknowledges that he has had an opportunity to ask questions concerning the terms of this agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of

this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Mark Allen, M.D, waives any and all claims or causes of action it may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. Adil Y. Yamour, M.D, waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

R-2015-262 Mr. Moné announced that the request for continuance regarding **Jonah Fox, R.Ph.** (03-2-21187) Belpre, Ohio is approved.

R-2015-263 Mr. Moné announced that the request for continuance regarding **Michael D. Bahmer, R.Ph.** (03-3-21660) Coshocton, Ohio is approved.

R-2015-264 Mr. Moné announced that the citation issued to **Garden Park Health Care Center**, Cincinnati, Ohio has been dismissed.

R-2015-265 Mr. Moné announced that the citation issued to **Hellertown Pharmacy** (02-2210850) Hellertown, Pennsylvania has been dismissed.

R-2015-266 Mr. Moné announced that the citation issued to **Palmer Pharmacy & Much More** (02-2210850) Bedford, Ohio has been dismissed.

R-2015-267 Mr. Moné announced that the citation issued to **Steveland Arnold, R.Ph.** (03-2-27464) Easton, Pennsylvania has been dismissed.

8:37 a.m. Ms. Ferris joined the meeting.

R-2015-268 Mr. Weaver moved to adopt the Human Trafficking program making it part of the law component for continuing education for pharmacists. The motion was seconded by Mr. Cain and approved by the Board: Aye – 7.

R-2015-269 Ms. Marchal moved to adopt Rule 4729-9-19 as amended. The motion was seconded by Ms. Yarosh and approved by the Board: Aye – 7.

8:45 a.m. 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 **James Louis Coll, III, R.Ph.**, Ravenna, Ohio.

10:08 a.m. The Board recessed briefly.

10:18 a.m. The meeting reconvened in Room South B&C.

11:25 a.m. The hearing ended and the record was closed.

Mr. Weaver 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 Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Marchal – yes; Weaver – yes and Yarosh – yes.

12:23 p.m. The recess ended and the hearing was opened to the public.

R-2015-270 After votes were taken in public session, the Board adopted the following order in the matter of **James Louis Coll, III, R.Ph.**, Ravenna, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2014-1002)

In The Matter Of:

James Louis Coll, III, R.Ph.

465 Rosedale Street
Ravenna, Ohio 44266
(R.Ph. Number)

INTRODUCTION

The Matter of James Louis Coll, III came for hearing on March 4, 2015, before the following members of the Board: Michael A. Moné, 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.; Fred Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

James Louis Coll, III was represented by Zachary Swisher. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

1. Trey Edwards, Ohio State Board of Pharmacy

Respondent's Witnesses:

1. Ed Rafferty, Friend of Respondent
2. James Louis Coll, III, Respondent

State's Exhibits:

- | | | |
|-------|--|----------|
| 1. | Summary Suspension/Notice of Opportunity for Hearing | 01-14-14 |
| 1A-H. | Procedurals | |
| 2. | OSBP Order in the Matter of James L. Coll, III | 08-12-14 |
| 3. | Notarized Statement of James L. Coll, III | 01-08-14 |
| 4. | RX#4058940 for James L. Coll, III | 11-18-13 |
| 5. | Photo of Ciclopirox Topical Solution | 01-08-14 |
| 6. | Patient Profile for James L. Coll, III | 01-08-14 |
| 7. | Patient Profile for Phyllis Coll | 01-08-14 |
| 8. | OSBP Inspection Report for Triangle Pharmacy, Ravenna, Ohio | 01-08-14 |
| 9. | HIPPA Complaint Authorization for Release of Medical Records
Signed by James L. Coll, III | 01-08-14 |
| 10. | Triangle Pharmacy CIII-CV Inventory | 05-06-11 |
| 10A. | Closing Inventory Report | 01-08-14 |
| 10B. | Accountability Statements | 02-19-14 |
| 11. | Notarized Statement of Andrew Drnjevich | 03-13-14 |

State's Aggravating Exhibits:

- | | | |
|-----|---|----------|
| 12. | Written Plea of Guilty, RE: James Louis Coll, III,
Case No. 2014 CR 0435 Portage County Common Pleas Court | 08-11-14 |
| 13. | Letter of Andrew Drnjevich | 02-10-15 |

Respondent's Exhibits:

- | | | |
|----|--|----------|
| A. | Letter of Richard C. Miller, DDS | 02-12-14 |
| B. | Letter of Frank Cimino, Esq. | 02-18-14 |
| C. | Letter of James A. Lunardi | No Date |
| D. | Letter of Colonel Mark A. Cianchetti | 02-09-14 |
| E. | Letter of Andrea Spagnuolo | No Date |
| F. | Glenbeigh Verification of Stay | 02-23-14 |
| G. | Glenbeigh Patient Handbook | No Date |
| H. | Letter of Michael Angelo | No Date |
| I. | Conference Agenda for the 16 th Annual Conference
On Chemical Dependency in the Profession of Pharmacy | 01-26-14 |
| J. | Additional (19) Letters of Support | Various |
| K. | Glenbeigh Inpatient Completion Letter | 02-28-14 |
| L. | Glenbeigh Discharge Plan | 03-28-14 |
| M. | Glenbeigh Treatment Plan | 01-22-14 |
| N. | PRO Contract | 03-17-14 |
| O. | PRO Self Reporting Exam | 06-30-14 |
| P. | Continuing Education | Various |
| Q. | Compass Recovery Center Evaluation | 09-17-14 |
| R. | Urinalysis Screens | Various |
| S. | Meeting Attendance Sheets, inclusive of 3 page supplement | Various |

T.	Report from Portage County Probation	02-17-15
U.	Letter of Paul D. Ciavarella, PRO Sponsor	02-15-15
V.	Letter of Mark C. Lesson, M.D., AA Sponsor	No Date
W.	Letter to OSBP from Mr. Coll's Counsel	03-02-14
X.	Letter of David Soldo, Clinical Director of Glenbeigh Outpatient	02-24-15
Y.	Letter of Jarrod Grossman, Executive Director of PRO	02-20-15
Z.	Letter of Gigi Muir, Glenbeigh	03-02-15
Aa.	Letter of Karla Galati, Glenbeigh Clinical Supervisor	02-21-15
Bb.	Letter of Myra Hindes, RPh., PRO Advocate	02-09-15
Cc.	Meeting Attendance Sheets	Various
Dd.	Urinalysis Screens	Various
Ee.	Letter of Robert C. Treat	03-01-14

FINDINGS OF FACT

The State of Ohio and Respondent, by and through counsel, stipulate to the following Findings of Fact, which are accepted and adopted by the Board:

(1) Records of the Board of Pharmacy indicate that James Louis Coll, III was originally licensed in the State of Ohio on April 24, 1980, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio. Records further reflect during the relevant time periods stated herein, James Louis Coll, III was the Responsible Pharmacist at Triangle Pharmacy, 219 W. Main Street, Ravenna, Ohio 44266, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code. Records further reflect that James Louis Coll, III was previously disciplined by this Board on August 7, 2012.

(2) The continuation of James Louis Coll, III's professional practice presents a danger of immediate and serious harm to others. Further, he is abusing drugs and/or liquor or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy. To wit: On December 23, 2013, after a syncopal episode, he was admitted to Robinson Memorial Hospital for alcohol and substance abuse. Upon admission, he tested positive for benzodiazepines and opiates. He further tested with an ethanol content of 359 mg/dL. He admitted to physicians at the hospital that he must drink alcohol every morning to avoid having the shakes, stating that he drinks 5-6 vodka and grapefruit drinks per day. He further admitted to Board agents that he has been stealing Norco 7.5/325 mg for the past two years for his own personal use, and that he has written several fraudulent prescriptions for himself for antibiotics and anti-fungal medications. His written statement to Board Agents contains the following statement: "I will never drink again because I realize I could cause serious harm to myself or even worse someone else."

(3) James Louis Coll, III did, on or between November 18, 2013 and January 8, 2014, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the

property of Triangle Pharmacy, without the legal right to do so, to wit: he stole approximately thirty-seven (37) tablets of hydrocodone/APAP 7.5/325 mg.

(4) James Louis Coll, III did, on or about January 8, 2014, knowingly possess or use a controlled substance when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: he possessed thirty-seven (37) tablets of hydrocodone/APAP 7.5/325 mg, which he stole from Triangle Pharmacy and for which he had no legitimate prescription.

(5) James Louis Coll, III did, on or around April 25, 2012, intentionally create and/or knowingly possess a false or forged prescription, to wit: he created a false phone-in prescription, Rx #6360941, listing him as the patient for thirty (30) amoxicillin 500 mg, a dangerous drug, at Triangle Pharmacy. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(6) James Louis Coll, III did, on or around January 3, 2013, intentionally create and/or knowingly possess a false or forged prescription, to wit: he created a false phone-in prescription, Rx #6369755, listing himself as the patient for Lotrisone Cream 45 gm (clotrimazole-betamethason 45 gm), a dangerous drug, at Triangle Pharmacy. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(7) James Louis Coll, III did, on or around February 26, 2013, intentionally create and/or knowingly possess a false or forged prescription, to wit: he created a false phone-in prescription, Rx #6371677, listing him as the patient for forty (40) amoxicillin 500 mg, a dangerous drug, at Triangle Pharmacy. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(8) James Louis Coll, III did, on or around February 26, 2013, intentionally create and/or knowingly possess a false or forged prescription, to wit: he created a false phone-in prescription, Rx #4057772, listing himself as the patient for Robitussin AC #240 ml (Cheratussin AC syrup #240 ml), a dangerous drug, at Triangle Pharmacy. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(9) James Louis Coll, III did, on or around October 17, 2013, intentionally create and/or knowingly possess a false or forged prescription, to wit: he created a false phone-in prescription, Rx #6379561, listing himself as the patient for twenty (20) Cipro 500 mg (ciprofloxacin hcl 500 mg), a dangerous drug, at Triangle Pharmacy. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code

(10) James Louis Coll, III did, on or around February 15, 2010, intentionally create and/or knowingly possess a false or forged prescription, to wit: he created a false phone-in prescription, Rx #6328363, listing Phyllis Coll as the patient for ten (10) azithromycin 250 mg, a dangerous drug, at Triangle Pharmacy. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(11) James Louis Coll, III did, on or around October 4, 2012, intentionally create and/or knowingly possess a false or forged prescription, to wit: he created a false phone-in prescription, Rx #4057158, listing Phyllis Coll as the patient for Cheratussin AC syrup #180ml, a dangerous drug, at Triangle Pharmacy. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(12) James Louis Coll, III did, on or around October 4, 2012, intentionally create and/or knowingly possess a false or forged prescription, to wit: he created a false phone-in prescription, Rx #6366620, listing Phyllis Coll as the patient for thirty (30) amoxicillin 500 mg, a dangerous drug, at Triangle Pharmacy. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(13) James Louis Coll, III did, on or around March 4, 2013, intentionally create and/or knowingly possess a false or forged prescription, to wit: he created a false phone-in prescription, Rx #6371892, listing Phyllis Coll as the patient for twelve (12) azithromycin 250 mg, a dangerous drug, at Triangle Pharmacy. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(14) James Louis Coll, III did, on or around October 17, 2013, intentionally create and/or knowingly possess a false or forged prescription, to wit: he created a false phone-in prescription, Rx #6379562, listing Phyllis Coll as the patient for twenty (20) ciprofloxacin hcl 500 mg, a dangerous drug, at Triangle Pharmacy. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(15) James Louis Coll, III did, on or about September 8, 2013, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: he answered "no" to the following question "Within the last 18 months, have you been the subject of disciplinary action by any state or federal agency?", when in fact he was the subject of disciplinary action by the Ohio State Board of Pharmacy on August 7, 2012. James Louis Coll, III, did on or about April 2, 2011 misbrand a drug in violation of Section 3715.52(A)(2) of the Ohio Revised Code, SETTLEMENT AGREEMENT of the State Board of Pharmacy, Docket No. 120319-243.

CONCLUSIONS OF LAW

The State of Ohio and respondent, by and through counsel, stipulate to the following Conclusions of Law, which are accepted and adopted by the Board:

(1) The State Board of Pharmacy concludes that paragraphs (3) through (15) of the Findings of Fact constitute being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraphs (3) through (15) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the

practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

(3) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

(4) Further, as a result of the evidence and testimony presented, the State Board of Pharmacy concludes that paragraphs (4) through (14) of the Findings of Fact constitute being guilty of willfully violating Chapter 2925.23(B)(1) of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to James Louis Coll, III on January 14, 2014 and July 2, 2014.

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. 03-1-13584, held by James Louis Coll, III and such suspension is effective as of the date of the mailing of this Order.

(A) James Louis Coll, III, 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) James Louis Coll, III, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return her/his identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

Further, after two years from the date of January 14, 2014, the Board will consider any petition filed by James Louis Coll, III 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) James Louis Coll, III must sign a new PRO contract. The contract must provide that:

(1) Random, observed urine drug screens shall be conducted at least once each month.

- (a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.
- (b) Alcohol must be added to the standard urine drug screen. A Breathalyzer may be used to test for alcohol, but an appropriately certified individual must conduct the test within twelve hours of notification
- (c) Results of all drug screens must be negative. Refusal of a drug screen or a diluted drug screen is equivalent to a positive result. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.
- (2) The intervener/sponsor shall submit 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) James Louis Coll, III must demonstrate satisfactory proof to the Board that he is no longer addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.
- (C) James Louis Coll, III 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) The Board orders that James Louis Coll, III pay a monetary penalty of two thousand five hundred dollars (\$2500.00) due and owing as a condition of reinstatement, should the Board grant a petition for reinstatement in the future. Checks should be made

payable to the "Treasurer, State of Ohio" and mailed with the enclosed forms to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

(E) Should James Louis Coll, III be granted reinstatement in a subsequent hearing, any pharmacy related employer must provide perpetual inventory reports of all controlled substances.

(F) 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.

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

Mr. Weaver moved for Action of the Board; Mr. Kolezynski seconded the motion. Motion passed (Aye-6/Nay-1).

SO ORDERED.

12:30 p.m. The Board recessed for lunch.

1:19 p.m. The meeting reconvened in Room South B&C.

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 **Kelley Anne Schmid, R.Ph.**, Gahanna, Ohio.

3:16 p.m. The hearing ended and the record was closed.

Ms. Ferris 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. Huwer and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Marchal – yes; Weaver – yes and Yarosh – yes.

3:33 p.m. The recess ended and the hearing was opened to the public.

R-2015-271 After votes were taken in public session, the Board adopted the following order in the matter of **Kelley Anne Schmid, R.Ph.**, Gahanna, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY
(Case Number 2013-1600)

In The Matter Of:

Kelley Anne Schmid, R.Ph.
3972 Roxham Ct.
Gahanna, Ohio 43230
(R.Ph. No. 03-3-21696)

INTRODUCTION

The Matter of Kelley Anne Schmid came for hearing on March 4, 2015, before the following members of the Board: Michael A. Moné, 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.; Fred Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

Kelley Anne Schmid was represented by R. Clayton Lopez. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

1. Kelley Anne Schmid, Respondent
2. Kevin Flaharty, Ohio State Board of Pharmacy

Respondent's Witnesses:

1. Kelley Anne Schmid, Respondent

State's Exhibits:

- | | | |
|-------|--|----------|
| 1. | Summary Suspension/Notice of Opportunity for Hearing | 11-05-13 |
| 1A-G. | Procedurals | |
| 2. | Statement of Kelley Anne Schmid | 06-27-13 |
| 3. | Notarized Statement of Kelley Anne Schmid | 07-05-13 |
| 4. | Wal-Mart Pharmacist Termination Notification
RE: Kelley Anne Schmid | 07-29-13 |
| 5. | Theft/Loss Report of Controlled Substance; Wal-Mart 10-3447 | 08-13-13 |
| 5A. | Theft/Loss Report of Controlled Substance; Wal-Mart 10-2098 | 08-13-13 |
| 5B. | Theft/Loss Report of Controlled Substance; Wal-Mart 10-2471 | 08-13-13 |
| 6. | Report from William T. Bennett, Document Examiner | 09-20-13 |
| 7. | Voided Copy of Blank Prescription for Nosrat Danai, M.D. | No Date |
| 8. | 70 Out-of-State Prescriptions Not Authorized by Dr. Danai | Various |
| 9. | OSBP Spreadsheet of Patient Histories | Various |

State's Aggravating Exhibits:

10. Judgement Entry; Franklin Co. Court of Common Pleas, 11-18-14
RE: Kelley Anne Schmid; Case No. 14CR-74

Respondent's Exhibits:

- A. Indictment, Sentencing Entry, Conditions of Community Various
Control and Proposed Settlement Agreement RE: Kelley Anne Schmid

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 Kelley Anne Schmid was originally licensed in the State of Ohio on July 30, 1996, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio.

(2) The continuation of Kelley Anne Schmid's professional practice presents a danger of immediate and serious harm to others, to wit: she has admitted that she knowingly filled seventy (70) out-of-state prescriptions, between September 9, 2010 and June 16, 2013, all of which were for controlled substances and determined to be counterfeit. She further admitted that she conducted no verification of these prescriptions prior to dispensing the drugs to her fiancée and members of his family. More than 11,000 tablets of various controlled substances were dispensed without a legitimate medical purpose as a result of her professional practice. Such conduct indicates that you are within the ambit of Sections 3719.121 and/or 4729.16 of the Ohio Revised Code.

(3) Kelley Anne Schmid did, between September 09, 2010 and June 16, 2013, knowingly fail to recognize your corresponding responsibility as required by Ohio Administrative Code Section 4729-5-21(A), on at least seventy (70) separate occasions, to wit: Kelley Anne Schmid failed to verify that seventy (70) out-of-state prescriptions for controlled substances were issued for a legitimate medical purpose in the course of a valid doctor-patient relationship.

(4) Kelley Anne Schmid did, between September 09, 2010 and June 16, 2013, knowingly fail to perform prospective drug utilization review as required by Ohio Administrative Code Section 4729-5-20, on at least seventy (70) separate occasions, to wit: she failed to review the patient profile for the purpose of identifying over-utilization, therapeutic duplication, incorrect drug dosage, abuse and/or abuse/misuse indicators on seventy (70) out-of-state prescriptions for controlled substances

(5) Kelley Anne Schmid did, on or about the following dates, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 2925., 3719., 4729., and 4731. of the Ohio Revised Code, to wit: she knowingly delivered 4,960 tablets of oxycodone 15 mg, a schedule II controlled substance, when she had reasonable cause to believe that the controlled substance were not prescribed for a legitimate medical purpose, the prescription was fraudulently obtained, and/or the drugs were intended for sale or resale by the customer or another person.

(6) Kelley Anne Schmid did, on or about the following dates, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 2925., 3719., 4729., and 4731. of the Ohio Revised Code, to wit: she knowingly delivered 4,800 tablets of oxycodone 30 mg, a schedule II controlled substance, when she had reasonable cause to believe that the controlled substance were not prescribed for a legitimate medical purpose, the prescription was fraudulently obtained, and/or the drugs were intended for sale or resale by the customer or another person.

(7) Kelley Anne Schmid did, on or about the following dates, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 2925., 3719., 4729., and 4731. of the Ohio Revised Code, to wit: she knowingly delivered 690 tablets of Lorcet (hydrocodone/APAP) 10/650 mg, a schedule III controlled substance, when she had reasonable cause to believe that the controlled substances were not prescribed for a legitimate medical purpose, the prescription was fraudulently obtained, and/or the drugs were intended for sale or resale by the customer or another person.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (5) through (7) of the Findings of Fact constitute being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraphs (3) through (7) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

(3) Further, as a result of the evidence and testimony presented, the State Board of Pharmacy concludes that paragraphs (2), (3), (5), (6) and (7) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Kelley Anne Schmid on November 5, 2013 and January 16, 2014.

Pursuant to Section 4729.16 of the Ohio Revised Code, and pursuant to Section 4729-9-01(E) of the Ohio Administrative Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Kelley Anne Schmid as follows:

(1) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law, the State Board of Pharmacy hereby **revokes permanently** the pharmacist identification card, No. 03-3-21696, held by Kelley Anne Schmid effective as of the date of the mailing of this Order.

(2) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law, the State Board of Pharmacy hereby **revokes permanently** the pharmacist identification card, No. 03-3-21696, held by Kelley Anne Schmid effective as of the date of the mailing of this Order.

(3) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law, the State Board of Pharmacy hereby **revokes permanently** the pharmacist identification card, No. 03-3-21696, held by Kelley Anne Schmid effective as of the date of the mailing of this Order.

Kelley Anne Schmid, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return her license to practice (pocket ID card) and registration (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.

Ms. Yarosh moved for Findings of Fact; Mr. Kolezynski seconded the motion. Motion passed (Aye-7/Nay-0).

Ms. Yarosh moved for Conclusions of Law; Mr. Kolezynski seconded the motion. Motion passed (Aye-7/Nay-0).

Ms. Ferris moved for Action of the Board; Ms. Huwer seconded the motion. Motion passed (Aye-6/Nay-1).

SO ORDERED.

3:36 p.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 Mr. Weaver and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Marchal – yes; Weaver – yes and Yarosh – yes.

4:52 p.m. The meeting reconvened in Room South B&C.

R-2015-272 Mr. Kolezynski moved that the following resolution be adopted by the Board and memorialized in the Minutes of this meeting:

A Resolution for Thomas M. Miksch

WHEREAS, the administrative and investigative efforts of Thomas M. Miksch as Compliance Agent and then as Compliance Agent with the Ohio State Board of Pharmacy, have directly led to the successful and thoughtful enforcement of the Ohio Drug Laws; and

WHEREAS, these efforts have contributed to the ongoing protection and safety of the citizens of Ohio; therefore

BE IT RESOLVED, that the Ohio State Board of Pharmacy hereby commends Thomas Miksch for his over 16 years of exemplary service and performance to the Board and to the people of Ohio in carrying out the responsibilities of his position, and

BE IT ALSO RESOLVED, that we, the Members of the Ohio State Board of Pharmacy, in its one hundredth twenty-ninth year, so express our profound appreciation to Thomas Miksch for his dedication and service to the Board and the citizens of Ohio, and

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

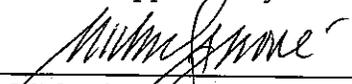
Mr. Weaver seconded the motion and it was approved by the Board: Aye – 7.

R-2015-273 Mr. Weaver moved that the Board receive Per Diem as follows:

PER DIEM	1/12	1/13	2/10	2/19	2/20	3/2	3/3	3/4	Total
Cain	0	0	0	0	0	1	1	1	3
Ferris	1	0	0	0	0	1	1	1	4
Huwer	0	1	1	0	1	1	1	1	6
Kolezynski	0	0	0	0	0	1	1	1	3
Marchal	0	0	0	0	0	1	1	1	3
Moné	0	0	0	1	0	1	1	1	4
Weaver	0	0	0	0	0	1	1	1	3
Yarosh	0	0	0	0	1	1	1	1	4

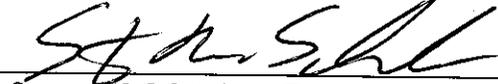
Ms. Marchal seconded the motion and it was approved by the Board: Aye – 7.

R-2015-274 Ms. Huwer moved that the meeting be adjourned. The motion was seconded by Mr. Cain and approved by the Board: Aye - 7.



Michael A. Moné, R.Ph., President

Date: 4/28/2015



Steven W. Schierholt, Esq., Executive Director

Date: 4/29/2015