



# OHIO STATE BOARD OF PHARMACY

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## OHIO STATE BOARD OF PHARMACY BUDGET TESTIMONY SENATE FINANCE COMMITTEE MAY 4, 2011

**William T. Winsley, M.S., R.Ph.**  
**Executive Director**

Mr. Chairman and members of the Senate Finance Committee, thank you for the opportunity to provide written and oral testimony before you today on the Board of Pharmacy's FY2012-13 budget request. Today I am going to ask you to make a few changes to the Executive Budget as introduced and, I assume, to the House version of HB 153. These are changes that I feel are essential to ensure that the Pharmacy Board has the ability to continue to carry out its role of public protection through licensing and drug law enforcement. I will list my requested changes to our appropriation amounts and then give an explanation of each.

1. Please restore the amounts deleted from our budget request (FY12 - \$146,057 and FY13 - \$148,153). At this time, it appears that the House did not add this amount back in.
2. Please allow the Pharmacy Board to finally leave the 4K90 fund (joint fund with the other licensing boards) by putting the attached (or similar) language into the budget bill, thereby creating a Pharmacy Board budget account similar to that of the Medical Board. Proposed language was submitted as part of our budget request, but does not appear to have been included in the Executive Budget nor does it appear to have been put in the House version of HB 153.
3. Please leave in the attached language that would allow us to enter into public-private partnerships in areas involving licensing that would be to our benefit. I believe this language is to be in the House version of the budget. In addition, this language is also probably going to be included as an amendment to HB 93, so it may be moot, but I'd like it to be left in just in case it's necessary.
4. As part of request 3 above, please add language raising the fee for a Wholesale Distributor of Dangerous Drugs (WDDD) from \$150 to \$750 per year and increase our spending authority by an amount that would be covered by the increased revenue (\$750,000 - \$900,000). For reasons that will be discussed below, this increase is needed due to the loss of federal funding for the OARRS program and other issues in the current federal budget.
5. Please increase the spending authority in our 4A50 fund (law enforcement fund) to \$150,000 per year.

It should be pointed out that the Pharmacy Board, like most, if not all, of the other licensing Boards, is self-supporting. We get absolutely no tax dollars to assist us in our operations. Our revenue is derived from licensing fees, certain criminal court fines, and from federal grants. The revenue for our law enforcement fund (4A50) comes from criminal drug fines and asset forfeitures from criminal cases we have worked. As a result, our revenue is not subject to the economic fluctuations that have affected other parts of Ohio's budget over the last few years. We have, however, been subjected to spending restraints similar to those imposed on GRF supported agencies. This has greatly hindered our ability to operate as effectively as we could have over those years. The situation has now reached a critical stage and we need your help before things get even worse.

At the end of this document, I have attached an "Introduction to the Board" that will give you some idea of the extent of our responsibilities as well as some of the results of our activities. I hope you will find it useful, not only as part of the budget process, but in the future as you contemplate other issues relating to drugs.

### **Issue #1 – Restoring original requested amounts**

In our original budget request, we asked for spending authority that would be the minimum amount needed to maintain our current operations. In addition, we asked for additional spending authority to cover the addition of some personnel in our OARRS program due to the increases in the demand and usage of OARRS. We originally asked for one pharmacist, one IT position, and to convert one temporary position to a full time position. These positions are necessary just to maintain our OARRS program at its current level of efficiency. These additional people were requested without any consideration of the effects of HB93 in this current Legislative session. After HB93 passes, the need for these and probably other personnel will be even greater. Even with these additional funds (FY12 - \$146,057 and FY13 - \$148,153), we will almost certainly not be able to maintain our current operations without additional spending appropriation, so the loss is quite damaging. We have had to seek additional appropriations from the Controlling Board every year for the last several years. This current budget year is no exception. We were denied the opportunity to go to the Controlling Board earlier this year by OBM, but we now have submitted another request and we are on the agenda for the May 9 meeting. Hopefully, our request will be approved so we will be able to finish this year. Visiting the Controlling Board every year is bothersome to them, OBM, and us. It would be less costly and more efficient to fund us adequately in the budget. Please consider adding the deleted amounts back in.

### **Issue #2 – Pharmacy Board Fund Creation**

Shortly after the 4K90 fund was created, the Medical Board was able to successfully petition to get out of the joint licensing fund and a new fund was created for them. We have petitioned to do the same every budget since then, but have been consistently ignored. This year, I would ask you to give serious consideration to allowing this to happen. The OAKS system is apparently unable to differentiate the funds in the joint 4K90 fund that should be allocated to each Board. That makes it difficult, if not impossible, to make any financially sound decisions on spending,

saving, and budgeting. This is especially critical to the Pharmacy Board as we have multiple sources of revenue and expense. We may not use money from pharmacists or physicians to run the OARRS program, but we could use money from other types of licenses and from criminal fines that are submitted to the Board. If our money remains in the joint account, we have to rely on other manually maintained records to estimate what funds can and cannot be used to supplement the federal grants for OARRS. Please consider the addition of the following language (or something similar that LSC might provide).

**PROPOSED NEW REVISED CODE LANGUAGE FOR FY12-13 BUDGET**

**PERMANENT LAW SECTION FOR PRX APPROPRIATION**

**4729.65 Disposition of fees; board of pharmacy drug law enforcement fund**

*(A) Except as provided in division (B) of this section, all receipts of the state board of pharmacy, from any source, shall be deposited into the state treasury to the credit of the ~~occupational~~ board of pharmacy licensing and regulatory fund. All vouchers of the board shall be approved by the president or executive director of the board, or both, as authorized by the board. All initial issuance fees and renewal fees required by sections 4729.01 to 4729.54 of the Revised Code shall be payable by the applicant at the time of making application.*

*(B)(1) There is hereby created in the state treasury the board of pharmacy drug law enforcement fund. All moneys that are derived from any fines, mandatory fines, or forfeited bail to which the board may be entitled under Chapter 2925., division (C) of section 2923.42, or division (B) of section 2925.42 of the Revised Code and all moneys that are derived from forfeitures of property to which the board may be entitled pursuant to Chapter 2925. or 2981. of the Revised Code, any other provision of the Revised Code, or federal law shall be deposited into the fund. Subject to division (B)(2) of this section, division (B) of section 2923.44, and divisions (B), (C), and (D) of section 2981.13 of the Revised Code, the moneys in the fund shall be used solely to subsidize the drug law enforcement efforts of the board.*

*(2) Notwithstanding any contrary provision in the Revised Code, moneys that are derived from forfeitures of property pursuant to federal law and that are deposited into the board of pharmacy drug law enforcement fund in accordance with division (B)(1) of this section shall be used and accounted for in accordance with the applicable federal law, and the board otherwise shall comply with that law in connection with the moneys.*

*(C) All fines and forfeited bonds assessed and collected under prosecution or prosecution commenced in the enforcement of this chapter shall be paid to the executive director of the board within thirty days and by the executive director paid into the state treasury to the credit of the ~~occupational~~ board of pharmacy licensing and regulatory fund. The board, subject to the approval of the controlling board and except for fees required to be established by the board at amounts "adequate" to cover designated expenses, may establish fees in excess of the amounts provided*

by this chapter, provided that such fees do not exceed the amounts permitted by this chapter by more than fifty per cent.

### **3719.21 Disposition of fines and forfeited bonds**

Except as provided in division (C) of section 2923.42, division (B) of section 2923.44, divisions (D)(1), (F), and (H) of section 2925.03, division (D)(1) of section 2925.02, 2925.04, or 2925.05, division (E)(1) of section 2925.11, division (F) of section 2925.13, division (F) of section 2925.36, division (D) of section 2925.22, division (H) of section 2925.23, division (M) of section 2925.37, division (B) of section 2925.42, division (B) of section 2929.18, division (D) of section 3719.99, division (B)(1) of section 4729.65, and division (E)(3) of section 4729.99 of the Revised Code, the clerk of the court shall pay all fines or forfeited bail assessed and collected under prosecutions or prosecutions commenced for violations of this chapter, section 2923.42 of the Revised Code, or Chapter 2925. of the Revised Code, within thirty days, to the executive director of the state board of pharmacy, and the executive director shall deposit the fines into the state treasury to the credit of the ~~occupational~~ board of pharmacy licensing and regulatory fund.

### **PROPOSED NEW REVISED CODE LANGUAGE FOR FY12-13 BUDGET**

#### **TEMPORARY LAW SECTION FOR PRX APPROPRIATION**

At the request of the Executive Director of the State Board of Pharmacy, the Director of Budget and Management may cancel encumbrances in fund 4K90 and reestablish such encumbrances or parts of encumbrances in FY 2012 in the **XXX** fund for the same purpose and to the same vendor. The Director of Budget and Management shall reduce the appropriation balance in fiscal year 2011 by the amount of encumbrances canceled in the 4K90 fund. As determined by the Director of Budget and Management, the appropriation authority necessary to reestablish such encumbrances or parts of encumbrances in fiscal year 2012 in the **XXX** fund for the State Board of Pharmacy is hereby appropriated. At such time that the Director of the Office of Budget and Management deems appropriate, the estimated cash balance of the 4K90 fund which is to the credit of the State Board of Pharmacy as determined by the Director of the Office of Budget and Management, shall be transferred to the **XXX** fund. The Director of the Office of Budget and Management shall transfer the difference between any estimated amount previously transferred and the final amount prior to the end of fiscal year 2012.

NOTE: OBM needs to determine the coding for the account entered as **XXX** above.

### **Issue #3 – Public-Private Partnership language**

After our initial budget was submitted, the Board was approached by a group who indicated that they would like to work with us in a public-private partnership to increase the number of manufacturer (wholesale) licenses issued by the Board. After discussion with them, we decided that the idea had merit and we would like to proceed. In order for that to happen, we feel that we need some authorization in the law to do so. Therefore, we would greatly appreciate the addition of the

following permanent language into the budget bill. Since this is supposed to be included in the House version of HB 153 as well as in HB 93, I would appreciate it if you would leave it in as the Senate processes the budget bill.

*4729.xx Public Private Partnership*

*The state board of pharmacy may enter into contracts with private entities for the furtherance of its duties as set forth in Chapter 4729 of the Revised Code. There shall be a preference that such contractors shall be Ohio-based companies. Any revenue created from such contracts shall be placed in (Fund or account to be identified by BOP) and may be used for the maintenance of the prescription drug monitoring program created by 4729.75 of the Revised Code and any other purpose determined by the state board of pharmacy.*

**Issue #4 – Raising the WDDD licensing fees**

Our current fee for our Wholesale Distributor of Dangerous Drugs (WDDD) license is \$150 per year. During our discussions on the public-private partnership (above), it was pointed out to us that our fees were among the lowest in the country. The following table will provide you with some examples of wholesale license costs in other states:

<b>State</b>	<b>Fee Amount</b>
Maryland*	\$1,750
Texas	\$1,350
Florida	\$1,000
New York	\$825
New Mexico	\$700
California	\$600
Washington	\$590
Alabama	\$500
North Carolina	\$500
Maine	\$400
Oregon	\$400
Arkansas	\$300
Iowa	\$300
Georgia	\$250
New Hampshire	\$250
Louisiana	\$200
New Jersey	\$200
North Dakota	\$200
Oklahoma	\$200
South Dakota	\$200
Minnesota	\$180

Ohio	\$150
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\* Two year fee

Inasmuch as we have also been told that many states are planning on raising these fees from their current levels, we would suggest that \$750 would not be out of line. In order to accomplish this, paragraph E of Ohio Revised Code §4729.52 would need to be revised as follows:

**4729.52 Registering as wholesale distributor.**

*(E)(1) The registration fee is ~~one hundred fifty dollars~~ SEVEN HUNDRED AND FIFTY DOLLARS and shall accompany each application for registration. The registration renewal fee is ~~one hundred fifty dollars~~ SEVEN HUNDRED AND FIFTY DOLLARS and shall accompany each renewal application. A registration certificate that has not been renewed in any year by the first day of August may be reinstated upon payment of the renewal fee and a penalty of ~~fifty-five~~ ONE HUNDRED FIFTY dollars.*

We have been told that our primary source of past funding for the OARRS program (Harold Rogers grants through the Bureau of Justice Assistance in the Department of Justice) were not funded in the current federal budget. Without the money from the federal grants, our OARRS program will be in severe financial difficulty. Raising this fee to \$750 per year should generate at least \$900,000 dollars in additional revenue for the Board. A corresponding increase in our spending appropriation by that approximate amount should allow us to fund the OARRS program at a level that will allow us to keep up with the greatly increased workload that HB93 is going to generate and will let us do that without relying on federal grants.

Your agreement to include the appropriate changes to the Revised Code and your support of the increase in spending authority would be greatly appreciated.

**Issue #5 – Increase 4A50 spending authority to \$150,000 per year**

The 4A50 fund is our law enforcement fund. By law, the money in this fund may only be spent for law enforcement purposes. The revenue in this fund comes from criminal cases that we work and consists primarily of criminal drug fines and asset forfeitures. Some years we bring in large amounts of money and some years we bring in very little. Historically, we have budgeted and received \$75,500 spending authority per year for the last several budgets. Expenditures from this fund consist primarily of undercover drug buys, expert witness fees, equipment needed for our investigators such as computers, surveillance cameras, telephones, etc. as well as additional training for our investigators. Just as the revenue fluctuates from year to year, so do the expenditures. However, we have found ourselves needing to visit with the Controlling Board more often lately as the intensity of our criminal cases has increased. By increasing the spending authority in this account to \$150,000 per year, we should be able to avoid the need to seek additional authority from the Controlling Board except in unusual circumstances. Needless to say, we will insure that there is money in this account adequate to cover any spending that is done.

Your positive consideration of these five requests for alterations to the Executive Budget would be greatly appreciated. It should go without saying that I or any of the Board staff would be happy to discuss any questions you may have about these requests now or in the future. On the following page, I have included a document entitled "Introduction to the Board" which explains our duties and gives some results of our activities. I hope you find it useful.



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## INTRODUCTION TO THE PHARMACY BOARD

William T. Winsley M.S., R.Ph.

Executive Director

## MISSION OF THE BOARD

*The Ohio State Board of Pharmacy shall act efficiently, consistently, and impartially in the public interest to pursue optimal standards of practice through communication, education, legislation, licensing, and enforcement.*

## GOALS

*The goals of the Ohio State Board of Pharmacy are to effectively and efficiently administer and enforce the laws governing the legal distribution of drugs and the practice of pharmacy. The purpose of these laws is to ensure the quality and safety of drugs administered or dispensed to Ohio's citizens; the competency of persons licensed to practice pharmacy in Ohio; and to prevent the diversion of drugs of abuse from the legal channels of distribution for illegal purposes.*

## **INTRODUCTION**

The Ohio State Board of Pharmacy was established by the Legislature in May of 1884 and has been in continuous service to the citizens of Ohio since that time. The duties of the Board have grown over the years and, at this time, encompass the enforcement of the following chapters in the Ohio Revised Code:

- 2925. – Criminal Drug Laws
- 3715.– Pure Food and Drug Law
- 3719. – Controlled Substance Act
- 4729. – Pharmacy Practice Act & Dangerous Drug Distribution Act

The State Board of Pharmacy consists of nine members appointed by the Governor to serve four year terms. Each member may be re-appointed one time at the Governor's discretion. At present, our Board members are:

**Richard F. Kolezynski, R.Ph.; Strongsville, (President)**  
**Donald M. Casar, R.Ph.; Hilliard, (Vice-President)**  
**Brian M. Joyce, R.Ph.; Girard**  
**Deborah A. Lange, R.Ph.; West Chester**  
**Troy A. Gahm, R.Ph.; Lucasville**  
**Jerome J. Wiesenhahn, R.Ph.; Mason**  
**Edward Cain, Public Member; Granville**

**Michael Mone, R.Ph.; Powell  
Kevin Mitchell, R.Ph.; Marion**

The Board appoints an Executive Director who functions as the Chief Executive Officer of the Board. The Executive Director is charged with the day-to-day operations of the Board, including the appointing of the appropriate personnel needed to conduct the Board's daily operations and all other functions necessary to ensure the proper functioning of the Board. The Executive Director (Bill Winsley, bill.winsley@bop.ohio.gov), the Assistant Executive Director (Tim Benedict, R.Ph.), the Licensing Administrator/Director of Internship (Kyle Parker), and the Legislative Affairs Administrator (Mark Keeley, R.Ph.) are all pharmacists and function as the main contact people for calls into the Board office. They may be reached by one of the methods listed on the letterhead at the beginning of this document.

Like the other licensing boards within Ohio, the Ohio State Board of Pharmacy is responsible for the licensing of the professionals that practice under the Board's authority. In our case, this includes pharmacists and pharmacy interns. In addition, the Board licenses sites where Dangerous Drugs (primarily those requiring a prescription) are purchased and stored prior to the delivery to a patient. The site licenses are issued by the Board as either a Terminal Distributor of Dangerous Drugs (mainly retail type settings) or a Wholesale Distributor of Dangerous Drugs. Terminal Distributor sites include, but are not limited to, retail pharmacies, hospitals, nursing homes, prisons and jails, emergency medical squads, clinics, medical gas distributors, etc.

As of February 3, 2011, the Board had the following numbers of active licenses:

Pharmacists	16,911
Pharmacy Interns	2,816
Terminal Distributors	14,844
Wholesale Distributors	1,541

In addition to the licensing function just discussed, the Ohio State Board of Pharmacy is also a law enforcement agency, making it unique among the licensing boards in Ohio. We are the only agency that has statewide jurisdiction to enforce the criminal drug laws and, therefore, you may hear that we have been responsible for criminal investigations of doctors, nurses, dentists, veterinarians, or other individuals far removed from our licensing functions as outlined above.

As an example, in the last ten years (January, 2001-December, 2010), agents of the Board of Pharmacy conducted investigations leading to the arrest of 851 professional individuals, as well as many other people, for violations of the criminal drug laws, including:

Pharmacists (RPh)	172
Pharmacy technicians	203
Pharmacy Interns	7
Registered Nurses (RN)	307
Licensed Practical Nurses (LPN)	192
Physicians (MD or DO)	52
Physician Assistants	1
Dentists (DDS)	7
Certified RN Anesthetists (CRNA)	6
Medical Assistants	13
Veterinary Technicians	1
EMT Basic	2
Paramedics	2
Police Officers	4
Veterinarians	1