



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

:

:

EDGAR E. KORNHAUSER, D.O.

:

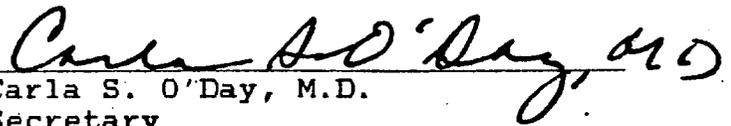
## ENTRY OF ORDER

On September 23, 1993, Edgar E. Kornhauser, D.O., executed a Voluntary Surrender of his Certificate to practice Osteopathic Medicine and Surgery with a consent to revocation, which document is attached hereto and fully incorporated herein.

In consideration of the foregoing and of Doctor Kornhauser's express waiver of the provision of Section 4731.22(B), Ohio Revised Code, requiring that six (6) Board Members vote to revoke said certificate, it is hereby ORDERED that Certificate No. 34000481 authorizing Edgar E. Kornhauser, D.O., to practice osteopathic medicine and surgery be permanently REVOKED, effective immediately.

This Order is hereby entered upon the Journal of the State Medical Board for the 16th day of July, 1993, and the original thereof shall be kept with said Journal.

(SEAL)

  
Carla S. O'Day, M.D.  
Secretary

10/14/93  
Date

SURRENDER OF CERTIFICATE  
TO PRACTICE MEDICINE AND SURGERY

I, EDGAR E. KORNHAUSER, D.O., am aware of my rights to representation by counsel, the right of being formally charged and having a formal adjudicative hearing, and do hereby freely execute this document and choose to take the actions described herein.

I, EDGAR E. KORNHAUSER, D.O., do hereby voluntarily, knowingly, and intelligently surrender my certificate to practice osteopathic medicine and surgery, No. 34-000481, to the State Medical Board of Ohio, thereby relinquishing all rights to practice osteopathic medicine and surgery in Ohio, effective IMMEDIATELY.

I understand that as a result of the surrender herein that I am no longer permitted to practice osteopathic medicine and surgery in any form or manner in the State of Ohio.

I agree that I shall be ineligible for, and shall not apply for, reinstatement of certificate to practice osteopathic medicine and surgery No. 34-000481 or issuance of any other certificate pursuant to Chapters 4730. or 4731., Ohio Revised Code, on or after the date of signing this Surrender of Certificate to Practice Osteopathic Medicine and Surgery. Any such attempted reapplication shall be considered null and void and shall not be processed by the Board.

I hereby authorize the State Medical Board of Ohio to enter upon its Journal an Order revoking my certificate to practice osteopathic medicine and surgery, No. 34-000481, in conjunction with which I expressly waive the provision of Section 4731.22(B), Ohio Revised Code, requiring that six (6) Board Members vote to revoke said certificate, and further expressly and forever waive all rights as set forth in Chapter 119., Ohio Revised Code, including but not limited to my right to counsel, right to a hearing, right to a present evidence, right to cross-examine witnesses, and right to appeal the Order of the Board revoking my certificate to practice osteopathic medicine and surgery.

I, EDGAR E. KORNHAUSER, D.O., hereby release the State Medical Board of Ohio, its members, employees, agents and officers, jointly and severally, from any and all liability arising from the within matter.

This document shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code.

Further, this information may be reported to appropriate organizations, data banks and governmental bodies.

I stipulate and agree that I am taking the action described herein in lieu of formal disciplinary proceedings pursuant to Sections 4731.22(B)(3) and (B)(9), Ohio Revised Code, to wit: Sections 2925.03(A)(1) and (D)(1), Ohio Revised Code.

I stipulate and agree that copies of a plea of guilty to, or judicial finding of guilt of, violations of Section 2925.03(A)(1) and (D)(1), Ohio Revised Code, to which I am pleading in the Court of Common Pleas, Mahoning County, Ohio, will be attached hereto and incorporated herein.

Signed this 16 day of JULY, 1993.

Samuel G. Amendola  
Witness

Edgar E. Kornhauser D.O.  
Edgar E. Kornhauser, D.O.

Arita Kroka  
Witness

Sworn to and subscribed before me this 16<sup>th</sup> day of July, 1993.

Miriam Pagan  
Notary Public

MIRIAM PAGAN, Notary Public  
State of Ohio  
My Commission Expires Sept. 7, 1993

SEAL

(This form must be either witnessed OR notarized)

Accepted by the State Medical Board of Ohio:

Carla S. O'Day  
Carla S. O'Day, M.D.  
Secretary

Raymond J. Albert  
Raymond J. Albert  
Supervising Member

9/23/93  
Date

9-22-93  
Date



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

## NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING

August 11, 1993

Edgar E. Kornhauser, D.O.  
1637 Mahoning Ave.  
Youngstown, OH 44509

In accordance with Sections 2929.17 and 4731.223(B), Ohio Revised Code, the Office of the Prosecuting Attorney of Mahoning County, Ohio, reported that on or about July 1, 1993, you pleaded guilty in the Mahoning County Court of Common Pleas to twenty-two (22) felony counts of Trafficking in violation of Section 2925.03(A)(1) and (D)(1), Ohio Revised Code.

Therefore, pursuant to Section 3719.121(C), Ohio Revised Code, you are hereby notified that your license to practice osteopathic medicine and surgery in the State of Ohio is immediately suspended. Continued practice after this suspension shall be considered practicing medicine without a certificate in violation of Section 4731.41, Ohio Revised Code.

Furthermore, in accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about July 1, 1993, in the Mahoning County Court of Common Pleas, you pleaded guilty to twenty-two (22), felony counts of Trafficking in violation of Section 2925.03(A)(1) and (D)(1), Ohio Revised Code.

Your plea of guilty as alleged in paragraph (1) above constitutes "a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

*Mailed 8/12/93*

August 11, 1993

Edgar E. Kornhauser, D.O.

Your plea of guilty as alleged in paragraph (1) above constitutes "inability to practice according to acceptable prevailing standards of care by reason of "a plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

  
Carla S. O'Day, M.D.  
Secretary

CSO:jmb

Enclosures:

CERTIFIED MAIL # P 348 885 270  
RETURN RECEIPT REQUESTED

### § 3719.12 Report of conviction to licensing board.

(A) As used in this section, "prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(B) Unless a report has been made pursuant to section 2929.17 of the Revised Code, on the conviction of a manufacturer, wholesaler, practitioner, pharmacist, or nurse of the violation of this chapter or Chapter 2925. of the Revised Code, the prosecutor in the case, on forms provided by the board, shall promptly report the conviction to the board by which the manufacturer, wholesaler, practitioner, pharmacist, or nurse has been licensed or registered to practice his profession or to carry on his business. Within thirty days of the receipt of this information, the board shall initiate action in accordance with Chapter 119. of the Revised Code to determine whether to suspend or revoke the license or registration.

HISTORY: GC § 12672-14; 116 v 491, § 14; Bureau of Code Revision, 10-1-53; 126 v 178 (Eff 9-16-55); 134 v H 924 (Eff 10-26-71); 136 v H 300 (Eff 7-1-76); 143 v H 615. Eff 3-27-91.

See provisions, § 3 of HB 300 (136 v —) following RC § 3719.01.1.

#### Cross-References to Related Sections

Prosecutor to report certain proceedings to appropriate licensing board, RC § 2929.17.

Suspension of licensee addicted to or improperly distributing controlled substances, RC § 3719.12.1.

#### Research Aids

##### Penalties and forfeitures:

O-Jur3d: Food, Drugs § 65

Am-Jur2d: Drugs §§ 27, 27.24, 48.7

C.J.S.: Drugs & N §§ 40-42, 84-87, 91, 95-97, 109

##### West Key No. Reference

Drugs & N 15, 30, 49

#### ALR

Applicability of statute of limitations or doctrine of laches to proceeding to revoke or suspend license to practice medicine. 51 ALR4th 1147.

Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotic or stimulant drugs. 17 ALR3d 1408.

### [§ 3719.12.1] § 3719.121 Suspension of licensee addicted to or improperly distributing controlled substances.

(A) Except as otherwise provided in section 4723.28 or 4731.22 of the Revised Code, any practitioner, nurse, pharmacist, manufacturer, or wholesaler, who is or becomes addicted to the use of controlled substances, shall have his license or registration suspended by the board under which he has been licensed or registered until the practitioner, nurse, pharmacist, manufacturer, or wholesaler offers satisfactory proof to the board that he is no longer addicted to the use of controlled substances.

(B) The license or registration of a practitioner, nurse, pharmacist, manufacturer, or wholesaler may be suspended without a prior hearing by the

board under which he has been licensed or registered if the board determines that there is clear and convincing evidence that continuation of his professional practice or his method of distributing controlled substances presents a danger of immediate and serious harm to others. Except as otherwise provided in sections 4715.30, 4723.281 [4723.28.1], and 4731.22 of the Revised Code, the board shall follow the procedure for suspending a license without a prior hearing in section 119.07 of the Revised Code. The suspension shall remain in effect, unless removed by the board, until the board's final adjudication order becomes effective, except that if the board does not issue its final adjudication order within ninety days after the hearing, the suspension shall be void on the ninety-first day after the hearing.

(C) On receiving notification pursuant to section 2929.17 or 3719.12 of the Revised Code, the board under which a practitioner, nurse, pharmacist, manufacturer, or wholesaler has been licensed or registered shall immediately suspend the license or registration of that person on his plea of guilty to, or a judicial finding of his guilt of, a felony drug abuse offense as defined in section 2925.01 of the Revised Code, a judicial finding of his eligibility for treatment in lieu of conviction, a plea of guilty to, or a judicial finding of his guilt of, an offense in another jurisdiction that is essentially the same as a felony drug abuse offense, or a judicial finding of his eligibility for treatment in lieu of conviction in another jurisdiction. The board shall notify the holder of the license or registration of the suspension, which shall remain in effect until an adjudicatory hearing is held by the board under Chapter 119. of the Revised Code.

HISTORY: 126 v 178 (Eff 9-16-55); 129 v 582(816) (Eff 1-10-61); 136 v H 300 (Eff 7-1-76); 143 v H 615. Eff 3-27-91.

See provisions, § 3 of HB 300 (136 v —) following RC § 3719.01.1.

#### Cross-References to Related Sections

Disciplinary actions against licensees, RC § 4723.28.

Disciplinary actions by state dental board, RC § 4715.30. Grounds for discipline by state medical board, RC § 4731.22.

#### Research Aids

##### Enforcement of law:

O-Jur3d: Food, Drugs § 65

##### Suspension:

Am-Jur2d: Drugs §§ 27, 27.9

C.J.S.: Drugs & N § 40

##### West Key No. Reference

Drugs & N 15

#### ALR

Alcoholism, narcotics addiction, or misconduct with respect to alcoholic beverages or narcotics, as ground for revocation or suspension of license to practice medicine. 93 ALR2d 1398.

Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotic or stimulant drugs. 17 ALR3d 1408.

### § 3719.13 Inspection of prescriptions, orders, records, and stock.

Prescriptions, orders, and records, required by

**Comparative Legislation**

**Corrupting another with drugs:**

- CA—Health & S §§ 11104, 11360
- FL—Stat Ann § 893.13
- IL—Ann Stat ch 56½ § 1102
- IN—Code § 35-48-4-1
- KY—Rev Stat Ann §§ 218A.140, 218A.990
- MI—Comp Laws Ann § 333.7401
- NY—Penal Law §§ 220.31-220.43
- PA—CSA tit 35 § 780-113

**Text Discussion**

Drug offense and drunk driving alternative sentences.  
Klein §§ 4.12, 4.13

**Forms**

Corrupting another with drugs. 4 OJI 525.02

**Research Aids**

**Corrupting another with drugs:**

- O-Jur3d: Crim L §§ 2279, 2280
- Am-Jur2d: Drugs §§ 27.13-27.19
- C.J.S.: Drugs & N § 151

**West Key No. Reference**

Drugs & N 61

**ALR**

- Criminality of act of directing to, or recommending, source from which illicit drugs may be purchased. 42 ALR3d 1072.
- Criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another. 32 ALR3d 589.
- Defense of necessity, duress, or coercion in prosecution for violation of state narcotics laws. 1 ALR5th 938.
- Giving, selling, or prescribing dangerous drugs as contributing to the delinquency of a minor. 36 ALR3d 1292.

**CASE NOTES AND OAG**

1. (1990) Specific penalties contained in Ohio's drug statutes do not supersede RC § 2929.11 as to sentencing: *State v. Dotson*, No.90AP-261 (10th Dist.).
2. (1989) Fines assessed and collected under prosecutions commenced for violations of RC Chapters 2925. and 3719. are excepted from the disbursement provisions of RC § 3375.52 and, pursuant to RC § 3719.21, are paid to the executive director of the State Board of Pharmacy and by him paid into the state treasury to the credit of the general revenue fund with the exception of mandatory drug fines, which are disbursed pursuant to RC § 2925.03(J): OAG No.89-103.

**§ 2925.03 Trafficking in drugs.**

- (A) No person shall knowingly do any of the following:
- (1) Sell or offer to sell a controlled substance in an amount less than the minimum bulk amount;
  - (2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance, when the offender knows or has reasonable cause to believe the controlled substance is intended for sale or resale by the offender or another;
  - (3) Cultivate, manufacture, or otherwise engage

in any part of the production of a controlled substance;

- (4) Possess a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount;
- (5) Sell or offer to sell a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount;
- (6) Possess a controlled substance in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount;

(7) Sell or offer to sell a controlled substance in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount;

(8) Provide money or other items of value to another person with the purpose that the recipient of the money or items of value would use them to obtain controlled substances for the purpose of selling or offering to sell the controlled substances in amounts exceeding a bulk amount or for the purpose of violating division (A)(3) of this section;

(9) Possess a controlled substance in an amount equal to or exceeding one hundred times the bulk amount;

(10) Sell or offer to sell a controlled substance in an amount equal to or exceeding one hundred times the bulk amount;

(11) Administer to a human being, or prescribe or dispense for administration to a human being, any anabolic steroid not approved by the United States food and drug administration for administration to human beings.

(B) This section does not apply to the following:

(1) Manufacturers, practitioners, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4729., 4731., and 4741. of the Revised Code;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

(C) If the drug involved is any compound, mixture, preparation, or substance included in schedule I, with the exception of marihuana, or in schedule II, whoever violates this section is guilty of aggravated trafficking.

(1) Where the offender has violated division (A)(1) of this section, aggravated trafficking is a

felony of the trafficking is a felony of the following

- (a) The offense is a felony in a premises, in a sand feet of the
- (b) The offense is a felony of one hundred feet of any juvenile, with the age of the juvenile is within the commission of the commission
- (c) The offense is a felony drug a
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- (3) Where t
- (A)(3) of this felony of the impose a sentence years, except t been convicted aggravated traffi and the court. carceration of
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- (b) The off hundred feet any juvenile. the age of the nile is within the commissi the commissi
- (c) The off a felony dru
- (6) Where
- (A)(6) of th

felony of the third degree, except that aggravated trafficking is a felony of the second degree, if any of the following apply:

(a) The offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises;

(b) The offender commits the offense within one hundred feet of any juvenile or within the view of any juvenile, whether or not the offender knows the age of the juvenile, the offender knows the juvenile is within one hundred feet or within view of the commission of the offense, or the juvenile views the commission of the offense;

(c) The offender previously has been convicted of a felony drug abuse offense.

(2) Where the offender has violated division (A)(2) of this section, aggravated trafficking is a felony of the third degree, except that, if the offender previously has been convicted of a felony drug abuse offense, aggravated trafficking is a felony of the second degree.

(3) Where the offender has violated division (A)(3) of this section, aggravated trafficking is a felony of the second degree, and the court shall impose a sentence of actual incarceration of three years, except that, if the offender previously has been convicted of a felony drug abuse offense, aggravated trafficking is a felony of the first degree, and the court shall impose a sentence of actual incarceration of five years.

(4) Where the offender has violated division (A)(4) of this section, aggravated trafficking is a felony of the third degree, and the court shall impose a sentence of actual incarceration of eighteen months, except that, if the offender previously has been convicted of a felony drug abuse offense, aggravated trafficking is a felony of the second degree, and the court shall impose a sentence of actual incarceration of three years.

(5) Where the offender has violated division (A)(5) of this section, aggravated trafficking is a felony of the second degree, and the court shall impose a sentence of actual incarceration of three years, except that aggravated trafficking is a felony of the first degree and the court shall impose a sentence of actual incarceration of five years, if any of the following apply:

(a) The offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises;

(b) The offender commits the offense within one hundred feet of any juvenile or within the view of any juvenile, whether or not the offender knows the age of the juvenile, the offender knows the juvenile is within one hundred feet or within view of the commission of the offense, or the juvenile views the commission of the offense;

(c) The offender previously has been convicted of a felony drug abuse offense.

(6) Where the offender has violated division (A)(6) of this section, aggravated trafficking is a

felony of the second degree, and the court shall impose a sentence of actual incarceration of three years, except that, if the offender previously has been convicted of a felony drug abuse offense, aggravated trafficking is a felony of the first degree, and the court shall impose a sentence of actual incarceration of five years.

(7) Where the offender has violated division (A)(7) of this section, aggravated trafficking is a felony of the first degree, and the court shall impose a sentence of actual incarceration of five years, except that the court shall impose a sentence of actual incarceration of at least seven years, if any of the following apply:

(a) The offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises;

(b) The offender commits the offense within one hundred feet of any juvenile or within the view of any juvenile, whether or not the offender knows the age of the juvenile, the offender knows the juvenile is within one hundred feet or within view of the commission of the offense, or the juvenile views the commission of the offense;

(c) The offender previously has been convicted of a felony drug abuse offense.

(8) Where the offender has violated division (A)(8) of this section, aggravated trafficking is a felony of the first degree, and the court shall impose a sentence of actual incarceration of seven years, except that, if the offender previously has been convicted of a felony drug abuse offense, the court shall impose a sentence of actual incarceration of ten years.

(9) Where the offender has violated division (A)(9) of this section, aggravated trafficking is a felony of the first degree, and the court shall impose an indefinite term of imprisonment of fifteen years to life for the offense, with the minimum term of fifteen years being a sentence of actual incarceration.

(10) Where the offender has violated division (A)(10) of this section, aggravated trafficking is a felony of the first degree, and the court shall impose an indefinite term of imprisonment of fifteen years to life for the offense, with the minimum term of fifteen years being a sentence of actual incarceration, except that the court shall impose an indefinite term of imprisonment of twenty years to life for the offense, with the minimum term of twenty years being a sentence of actual incarceration, if any of the following apply:

(a) The offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises;

(b) The offender commits the offense within one hundred feet of any juvenile or within the view of any juvenile, whether or not the offender knows the age of the juvenile, the offender knows the juvenile is within one hundred feet or within view of



the commission of the offense, or the juvenile views the commission of the offense;

(c) The offender previously has been convicted of a felony drug abuse offense.

(2) Where the offender has violated division (A)(2), (3), or (4) of this section, trafficking in marihuana is a felony of the fourth degree, except that, if the offender previously has been convicted of a felony drug abuse offense, trafficking in marihuana is a felony of the third degree.

(3) Where the offender has violated division (A)(5) of this section, trafficking in marihuana is a felony of the third degree, except that trafficking in marihuana is a felony of the second degree, if any of the following apply:

(a) The offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises;

(b) The offender commits the offense within one hundred feet of any juvenile or within the view of any juvenile, whether or not the offender knows the age of the juvenile, the offender knows the juvenile is within one hundred feet or within view of the commission of the offense, or the juvenile views the commission of the offense;

(c) The offender previously has been convicted of a felony drug abuse offense.

(4) Where the offender has violated division (A)(6) or (9) of this section, trafficking in marihuana is a felony of the third degree, except that, if the offender previously has been convicted of a felony drug abuse offense, trafficking in marihuana is a felony of the second degree.

(5) Where the offender has violated division (A)(7) or (10) of this section, trafficking in marihuana is a felony of the second degree, and the court shall impose a sentence of actual incarceration of six months, except that the court shall impose a sentence of actual incarceration of one year, if any of the following apply:

(a) The offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises;

(b) The offender commits the offense within one hundred feet of any juvenile or within the view of any juvenile, whether or not the offender knows the age of the juvenile, the offender knows the juvenile is within one hundred feet or within view of the commission of the offense, or the juvenile views the commission of the offense;

(c) The offender previously has been convicted of a felony drug abuse offense.

(6) Where the offender has violated division (A)(8) of this section, trafficking in marihuana is a felony of the second degree, and the court shall impose a sentence of actual incarceration of one year, except that, if the offender previously has been convicted of a felony drug abuse offense, the court shall impose a sentence of actual incarceration of two years.

(7) If the offense involves a gift of twenty grams

or less of marihuana and the offense does not involve a violation of division (A)(1), (5), (7), or (10) of this section that was committed on school premises, in a school building, or within one thousand feet of the boundaries of any school premises or that was committed within one hundred feet of any juvenile or within the view of any juvenile, whether or not the offender knows the age of the juvenile, the offender knows the juvenile is within one hundred feet or within view of the commission of the offense, or the juvenile views the commission of the offense, trafficking in marihuana is a minor misdemeanor for the first offense, and, for any subsequent offense, it is a misdemeanor of the third degree. If the offense involves a gift of twenty grams or less of marihuana and the offense involves a violation of division (A)(1), (5), (7), or (10) of this section that was committed on school premises, in a school building, or within one thousand feet of the boundaries of any school premises or that was committed within one hundred feet of any juvenile or within the view of any juvenile, whether or not the offender knows the age of the juvenile, the offender knows the juvenile is within one hundred feet or within view of the commission of the offense, or the juvenile views the commission of the offense, trafficking in marihuana is a misdemeanor of the third degree.

(F) It shall be an affirmative defense, as provided in section 2901.05 of the Revised Code, to a charge under this section for possessing a bulk amount of a controlled substance or for cultivating marihuana that the substance that gave rise to the charge is in such amount, in such form, or is prepared, compounded, or mixed with substances that are not controlled substances in such a manner, or is possessed or cultivated in any other circumstances whatsoever as to indicate that the substance was solely for personal use.

(G) When a person is charged with possessing a bulk amount or a multiple of a bulk amount, the jury, or the court trying the accused, shall determine the amount of the controlled substance involved at the time of the offense and, if a guilty verdict is returned, shall return the findings as part of the verdict. In any such case, it is unnecessary to find and return the exact amount of the controlled substance, and it is sufficient if the finding and return is to the effect that the amount of the controlled substance involved is a bulk amount or the requisite multiple of a bulk amount, or that the amount of the controlled substance involved is less than a bulk amount or the requisite multiple of a bulk amount.

(H) Notwithstanding the fines otherwise required to be imposed pursuant to section 2929.11 or 2929.31 of the Revised Code for violations of this section and notwithstanding section 2929.14 of the Revised Code, the court shall impose the following mandatory fines upon a person convicted of aggra-

vated trafficking, trafficking in drugs, or trafficking in marihuana:

(1) If the offense is trafficking in marihuana and a violation of division (A)(1) of this section, the court shall impose a mandatory fine of one thousand dollars, and if the offender has previously been convicted of a felony drug abuse offense, the court shall impose a mandatory fine of two thousand dollars.

(2) If the offense is trafficking in drugs and a violation of division (A)(1) of this section, the court shall impose a mandatory fine of one thousand five hundred dollars, and if the offender has previously been convicted of a felony drug abuse offense, the court shall impose a mandatory fine of three thousand dollars.

(3) If the offense is trafficking in marihuana and a violation of division (A)(2), (3), or (4) of this section, or if the offense is trafficking in drugs and a violation of division (A)(2) of this section, the court shall impose a mandatory fine of two thousand dollars, and if the offender has previously been convicted of a felony drug abuse offense, the court shall impose a mandatory fine of four thousand dollars.

(4) If the offense is aggravated trafficking and a violation of division (A)(1) of this section, or if the offense is trafficking in drugs and a violation of division (A)(3) of this section, the court shall impose a mandatory fine of two thousand five hundred dollars, and if the offender has previously been convicted of a felony drug abuse offense, the court shall impose a mandatory fine of five thousand dollars.

(5) If the offense is trafficking in marihuana and a violation of division (A)(5), (6), or (9) of this section, or if the offense is trafficking in drugs and a violation of division (A)(4), (5), (6), or (9) of this section, the court shall impose a mandatory fine of three thousand dollars, and if the offender has previously been convicted of a felony drug abuse offense, the court shall impose a mandatory fine of six thousand dollars.

(6) If the offense is trafficking in marihuana and a violation of division (A)(7) or (10) of this section, if the offense is trafficking in drugs and a violation of division (A)(7), (10), or (11) of this section, or if the offense is aggravated trafficking and a violation of division (A)(2), (4), (5), (6), or (9) of this section, the court shall impose a mandatory fine of five thousand dollars, and if the offender has previously been convicted of a felony drug abuse offense, the court shall impose a mandatory fine of ten thousand dollars.

(7) If the offense is aggravated trafficking and a violation of division (A)(3), (7), or (10) of this section, the court shall impose a mandatory fine of seven thousand five hundred dollars, and if the offender has previously been convicted of a felony drug abuse offense, the court shall impose a mandatory fine of fifteen thousand dollars.

(8) If the offense is trafficking in marihuana and a violation of division (A)(8) of this section or if the

offense is trafficking in drugs and a violation of division (A)(8) of this section, the court shall impose a mandatory fine of ten thousand dollars, and if the offender has previously been convicted of a felony drug abuse offense, the court shall impose a mandatory fine of twenty thousand dollars.

(9) If the offense is aggravated trafficking and a violation of division (A)(8) of this section, the court shall impose a mandatory fine of twenty-five thousand dollars, and if the offender has previously been convicted of a felony drug abuse offense, the court shall impose a mandatory fine of fifty thousand dollars.

(I) When the mandatory fine imposed pursuant to division (H) of this section does not exceed the maximum fine that could be imposed pursuant to section 2929.11 or 2929.31 of the Revised Code, the court may impose an additional fine if the total of the mandatory and additional fines together does not exceed the maximum fine that could be imposed pursuant to section 2929.11 or 2929.31 of the Revised Code. When the mandatory fine exceeds the maximum fine that could be imposed pursuant to section 2929.11 or 2929.31 of the Revised Code, the court shall not impose an additional fine.

(J)(1) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, any mandatory fine imposed pursuant to this section shall be paid by the clerk of the court to the county, township, municipal corporation, park district, as created pursuant to section 511.18 or 1545.01 of the Revised Code, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. However, no mandatory fine so imposed shall be paid to a law enforcement agency unless the agency has adopted a written internal control policy under division (J)(2) of this section that addresses the use of the fine moneys that it receives. The mandatory fines so paid shall be used to subsidize each agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (J)(2) of this section. Any additional fine imposed pursuant to division (I) of this section shall be disbursed by the clerk of the court as otherwise provided by law.

(2)(a) Prior to receiving any fine moneys under division (J)(1) of this section or division (B)(5) of section 2925.42 of the Revised Code, a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the receipts of those fine moneys, the

general type moneys, and type of expenditures open for inspection under the Revised Code. The policy adopted shall be recorded and filed with it.

(b) Each law enforcement agency shall file any calendar year report (J)(1) of this section by section 2925.42 of the Revised Code covering the information contained in the records kept by the agency under (J)(2)(a) of this section. The report shall send a copy of the report to the attorney general following the report to the attorney general for the attorney general's inspection under the Revised Code. The attorney general shall file each report by the tenth day of the month following the report is received by the president of the agency.

(3) As used in this section:

(a) "Law enforcement agency" means a law enforcement agency not limited to a law enforcement office of a public entity.

(b) "Prosecution" means a prosecution under section 2935.01 of the Revised Code.

(K) If a person is convicted under this section of a violation of section 2937.22 to 2937.24 of the Revised Code, Rule 46, and the person is not released on forfeited bail, the court shall impose a mandatory fine of five thousand dollars under this section.

(L) No court shall impose a mandatory fine on an offender who is convicted of a violation of this section prior to the offender's conviction and is unable to pay the fine pursuant to the provisions of this section that the offender is unable to pay the fine.

(M) In addition to the mandatory fine imposed on a driver's or operator's license under this section, the court shall suspend the driver's or operator's license of a person who is convicted of a violation of this section if the person is convicted of a violation of this section of a commercial driver's license or a commercial driver's license of this section. The suspension shall be for a period of two years from the date of the conviction, unless the person was imposed

general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under section 149.43 of the Revised Code. Additionally, a written internal control policy adopted under this division is such a public record, and the agency that adopted it shall comply with it.

(b) Each law enforcement agency that receives in any calendar year any fine moneys under division (J)(1) of this section or division (B)(5) of section 2925.42 of the Revised Code shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency pursuant to division (J)(2)(a) of this section for that calendar year, and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the attorney general. Each report received by the attorney general is a public record open for inspection under section 149.43 of the Revised Code. The attorney general shall make copies of each report received, and, no later than the fifteenth day of April in the calendar year in which the report is received, shall send a copy of it to the president of the senate and the speaker of the house of representatives.

(3) As used in divisions (J) and (N) of this section:

(a) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.

(b) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(K) If a person is charged with any violation of this section and posts bail pursuant to sections 2937.22 to 2937.46 of the Revised Code or Criminal Rule 46, and if the person forfeits the bail, the forfeited bail shall be paid pursuant to division (J) of this section.

(L) No court shall impose a mandatory fine pursuant to division (H) of this section upon an offender who alleges, in an affidavit filed with the court prior to his sentencing, that he is indigent and is unable to pay any mandatory fine imposed pursuant to that division, if the court determines that the offender is an indigent person and is unable to pay the fine.

(M) In addition to any other penalty imposed for a violation of this section, the court may revoke the driver's or commercial driver's license of any person who is convicted of or pleads guilty to a violation of this section that is a felony of the first degree, or may suspend for up to five years the driver's or commercial driver's license of any person who is convicted of or pleads guilty to any other violation of this section. If an offender's driver's or commercial driver's license is revoked pursuant to this division, the offender, at any time after the expiration of two years from the day on which his sentence was imposed or from the day on which he finally

was released from imprisonment under the sentence, whichever is later, may file a motion with the sentencing court requesting termination of the revocation; upon the filing of such a motion and the court's finding of good cause for the termination, the court may terminate the revocation.

If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other penalty imposed for a violation of this section, the court forthwith shall comply with section 2925.38 of the Revised Code.

(N) If a person commits any act that violates division (A)(11) of this section and also violates any other provision of the Revised Code, the prosecutor, using customary prosecutorial discretion, may prosecute the person for a violation of the appropriate provision of the Revised Code.

HISTORY: 136 v H 300 (Eff 7-1-76); 141 v S 67 (Eff 8-29-86); 143 v H 215 (Eff 4-11-90); 143 v H 261 (Eff 7-18-90); 143 v H 266 (Eff 9-6-90); 143 v S 258 (Eff 11-20-90); 144 v H 62 (Eff 5-21-91); 144 v S 174 (Eff 7-31-92); 144 v H 591. Eff 11-2-92.

#### Cross-References to Related Sections

##### Penalties—

Felonies, for, RC § 2929.11.

Misdemeanors, for, RC § 2929.21.

Actual incarceration defined, RC § 2925.01.

Adjudication order permanently excluding pupil from public schools, RC § 3313.66.2.

Board of pharmacy drug law enforcement fund, RC § 4729.65.

Bulk amount defined, RC § 2925.01.

Certain offenders disqualified from preschool employment, RC § 3301.54.

Complaint against juvenile, RC § 2151.27.

Convictions to be reported to professional licensing authorities, RC § 2925.38.

Corrupt activity defined, RC § 2923.31.

Corrupting another with drugs, RC § 2925.02.

Cultivate defined, RC § 2925.01.

Definitions applicable to drug abuse offenses, RC § 3719.01.

Disposition of delinquent child, RC § 2151.35.5.

Disposition of fines and forfeited bail, RC § 3719.21.

Drug abuse offense defined, RC § 2925.01.

Emergency paroles, RC § 2967.18.

Felony drug abuse offense defined, RC § 2925.01.

Fines, bail forfeiture, license suspension—

Abusing harmful intoxicants, RC § 2925.31.

Deception to obtain a dangerous drug, RC § 2925.22.

Drug abuse, RC § 2925.11.

Drug paraphernalia offenses, RC § 2925.14.

Illegal dispensing of drug samples, RC § 2925.36.

Illegal processing of drug documents, RC § 2925.23.

Offenses involving counterfeit controlled substances, RC § 2925.37.

Permitting drug abuse, RC § 2925.13.

Possessing drug abuse instruments, RC § 2925.12.

Trafficking in harmful intoxicants, RC § 2925.32.

Forfeiture of property in connection with felony drug abuse offense or act; RC § 2925.42.

Knowingly defined, RC § 2901.22.