

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-981009-020)

In The Matter Of:

LINDEN MEDICAL PHARMACY, INC.
c/o Lawrence A. Kaufman
2349 Cleveland Avenue
Columbus, Ohio 43211
(Terminal Distributor No. 02-0138550)

INTRODUCTION

THE MATTER OF LINDEN MEDICAL PHARMACY, INC. CAME FOR CONSIDERATION ON DECEMBER 5, 2001, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ANN D. ABELE, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

SUMMARY OF EVIDENCE

State's Exhibits

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter dated October 9, 1998.
- (2) Exhibit 1A--Hearing Request letter dated October 28, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated November 3, 1998.
- (4) Exhibit 1C--Copy of Renewal Application for DDD License, No. 02-0138550, for a terminal Distributor of Dangerous Drugs License from January 1, 1998, to December 31, 1998, of Linden Medical Pharmacy, Inc. signed by Jerome C. Broering dated October 21, 1997.
- (5) Exhibit 1D--Continuance Request letter dated March 2, 1999.
- (6) Exhibit 1E--Hearing Schedule letter dated March 10, 1999.
- (7) Exhibit 1F--Hearing Schedule letter dated April 19, 1999.
- (8) Exhibit 2--Accountability Statement of Linden Medical Pharmacy for APAP/Codeine #4 dated October 15, 1996.
- (9) Exhibit 3--Accountability Statement of Linden Medical Pharmacy for Diazepam 10mg dated October 15, 1996.
- (10) Exhibit 4--Accountability Statement of Linden Medical Pharmacy for Adipex-P dated October 15, 1996.
- (11) Exhibit 5--Accountability Statement of Linden Medical Pharmacy for Phentermine HCL 37.5mg dated October 15, 1996.
- (12) Exhibit 6--Notarized Statement of Jerome C. Broering dated May 30, 1997.
- (13) Exhibit 7--Accountability Statement of Linden Medical Pharmacy for Talwin NX dated October 15, 1996.
- (14) Exhibit 8--Two-page Dangerous Drug Distributor Inspection Report of Linden Medical Pharmacy, Inc. dated October 15, 1996.

- (15) Exhibit 9--Letter from Jerome C. Broering, not dated, received October 30, 1996.
- (16) Exhibit 10--Copy of six Audit Comparison-Linden Medical Pharmacy reports for time periods covering August 19, 1995, through October 14, 1996, and October 15, 1996, through March 11, 1998.
- (17) Transcript of May 5, 1999 Hearing.
- (18) Decision And Judgment Entry Affirming In Part And Reversing In Part The Order Of The Ohio State Board Of Pharmacy And Remanding The Matter For Reconsideration Of Penalty, Linden Medical Pharmacy, Inc. vs. Ohio State Board of Pharmacy, Case No. 99CVF06-5024, Franklin County Common Pleas Court (May 19, 2000).
- (19) Opinion, Linden Medical Pharmacy, Inc., vs. Ohio State Board of Pharmacy, Case No. 00AP-641, Tenth Appellant District Court of Appeals (May 8, 2001).
- (20) Judgment Entry, Linden Medical Pharmacy, Inc. vs. Ohio State Board of Pharmacy, Case No. 00AP-641, Tenth Appellate District Court of Appeals (May 10, 2001).
- (21) Journal Entry, Linden Medical Pharmacy, Inc. vs. Ohio State Board of Pharmacy, Case No. 99CVF06-5024, Franklin County Common Pleas Court (May 15, 2001).

Respondent's Exhibits

- (1) Exhibit A--Five-page table titled "Ohio State Board of Pharmacy Orders and Settlement Agreements Involving Terminal Distributors (Jun. 1996 to Feb. 1999)".
- (2) Exhibit B--Copy of two-page letter from Kevin P. Byers dated March 24, 1999.
- (3) Exhibit C--Copy of four-page Notice of Opportunity for Hearing letter of Jerome C. Broering dated October 9, 1998.
- (4) Exhibit D--Copy of letter from Lawrence A. Kaufman dated April 20, 1999.
- (5) Exhibit E--Copy of Notification of Change of Responsible Person form of Linden Medical Pharmacy signed by Robert M. Feldman with an effective date of April 21, 1999.
- (6) Exhibit F--Copy of seven-page Linden Medical Pharmacy, Inc. Company Policy, not dated.
- (7) Exhibit G--Copy of four-page Settlement Proposal of Linden Medical Pharmacy, Inc. dated April 30, 1999.
- (8) Exhibit H--Copy of Diverted Drug Report of Linden Medical Pharmacy, Inc. dated May 16, 1997.
- (9) Exhibit I--Two-page copy of Renewal Application for Pharmacist License, No. 03-2-10130, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Jerome C. Broering dated November 4, 1997.
- (10) Exhibit J--Copy of Pharmacist File Front Sheet of Jerome Charles Broering showing original date of registration as July 20, 1972; and two-page copy of Renewal Application for Pharmacist License, No. 03-2-10130, for a license to practice pharmacy in Ohio from September 15, 1998, to September 15, 1999, of Jerome C. Broering dated August 4, 1998.
- (11) Exhibit K--Copy of Complaint in the Franklin County Municipal Court, Case No. 33196-1, State of Ohio vs. Jerome C. Broering, dated December 12, 1997.
- (12) Exhibit L--Copy of Complaint in the Franklin County Municipal Court, Case No. 33196-2, State of Ohio vs. Jerome C. Broering dated December 12, 1997.
- (13) Exhibit M--Copy of Complaint in the Franklin County Municipal Court, Case No. 33196-3, State of Ohio vs. Jerome C. Broering dated December 12, 1997.
- (14) Exhibit N--Copy of Entry in the Franklin County Municipal Court, Case No. 33196/97, State of Ohio vs. Jerome C. Broering dated April 1, 1998.

- (15) Exhibit O--Handwritten notes dated from December 10, 1996, through January 17, 1997.
- (16) Exhibit P--Copy of Controlled Substance Inventory cover page signed by Joseph M. Mink and dated August 18, 1995, pages 7 through 28 of Biennial Controlled Substance Inventory report dated April 8, 1993, and hand-completed Biennial Controlled Substance Inventory Date form, not dated.

FINDINGS OF FACT

After having considered the matter as remanded, the State Board of Pharmacy notes that the court has affirmed the following Findings of Fact previously determined by the Board:

- (1) Records of the State Board of Pharmacy indicate that during the relevant time periods stated herein, Jerome C. Broering was the Responsible Pharmacist at Linden Medical Pharmacy, Inc. pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) Linden Medical Pharmacy, Inc. did, from August 18, 1995, through October 15, 1996, fail to provide effective and approved controls and procedures to guard against theft and diversion of dangerous drugs, to wit: Linden Medical Pharmacy, Inc. had inadequate supervision and control over the controlled substances so as to prevent, deter, or detect the diversion of the controlled substances. Such conduct is in violation of Rule 4729-9-05 of the Ohio Administrative Code.
- (3) Linden Medical Pharmacy, Inc. did, on or about October 15, 1996, and dates prior thereto, fail to maintain the minimum standards for a pharmacy, to wit: Linden Medical Pharmacy, Inc. did not possess a copy of current federal and state laws, regulations, and rules governing the legal distribution of drugs in Ohio. Such conduct is in violation of Rule 4729-9-02 of the Ohio Administrative Code.

CONCLUSION OF LAW

After having considered the matter as remanded, the State Board of Pharmacy notes that the court has affirmed the following Conclusion of Law previously determined by the Board:

- (1) Paragraphs (2) and (3) of the Findings of Fact constitute violating rules of the Board as provided in Division (A)(2) of Section 4729.57 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.57 of the Ohio Revised Code, and on the basis of the affirmed and remanded Findings of Fact and Conclusion of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor license, No. 02-0138550, held by Linden Medical Pharmacy, Inc. effective as of the date of the mailing of this Order.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-8/Nay-0).

MOTION CARRIED.

SO ORDERED.

It is hereby certified by this Board that the above language is a copy of the Order entered upon its journal in this matter.

Section 119.12 of the Ohio Revised Code authorizes an appeal from this Order. An order that denied admission to an examination, or denied the issuance or renewal of a license or registration, or revoked or suspended a license, may be appealed to the court of common pleas in the Ohio county of your place of business or in your Ohio county of residence. Any other order may be appealed to the Court of Common Pleas of Franklin County, Ohio.

Such an appeal, setting forth the order appealed from and the grounds of the appeal, must be commenced by the filing of a Notice of Appeal with both the State Board of Pharmacy and the appropriate court within fifteen (15) days after the mailing of this Order and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

ORDER EFFECTIVE JANUARY 11, 2002