

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-991116-033)

In The Matter Of:

CROOKSVILLE EMERGENCY SQUAD
c/o Paul Mumma, D.O.
22 China Street
Crooksville, Ohio 43731
(Terminal Distributor No. 02-0354750)

INTRODUCTION

THE MATTER OF CROOKSVILLE EMERGENCY SQUAD CAME FOR HEARING ON MAY 2, 2000, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

CROOKSVILLE EMERGENCY SQUAD WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Bill Padgett, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Paul Mumma, D.O., Responsible Person for Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of four-page Notice of Opportunity for Hearing dated November 16, 1999.
- (2) Exhibit 1A--Hearing Request letter dated December 8, 1999.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated December 20, 1999.
- (4) Exhibit 1C--Two-page copy of Renewal Application for DDD License No. 02-0354750 for a terminal distributor of dangerous drugs license from January 1, 2000, to December 31, 2000, dated December 20, 1999, with attached drug license personnel list.

- (5) Exhibit 2--Copy of five pages of a handwritten record showing run number, date, items used, old lock number, new lock number, EMT initials, and medic initials dated March 19, 1998, through May 10, 1999.
- (6) Exhibit 3--Copy of the cover and six pages of a handwritten record showing run number, date, items used, old lock number, new lock number, EMT initials, and medic initials dated April 8, 1998, through June 2, 1999.
- (7) Exhibit 4--Handwritten statement of Marsha Thomas dated June 4, 1999.
- (8) Exhibit 5--Handwritten statement of Glenna J. Alexander dated June 4, 1999.
- (9) Exhibit 6--Two-page handwritten statement of Mitchel Stanley, Jr. dated June 4, 1999.
- (10) Exhibit 7--Copy of twenty-four pages of Genesis Healthcare System EMS Requisitions for Crooksville EMS dated May 22, 1999; April 27, 1999; April 20, 1999; January 18, 1999; January 23, 1999; January 31, 1999; and February 19, 1999; and copy of three-page alphabetical listing of stock orders.
- (11) Exhibit 8--Four-page handwritten statement of William Kelso dated June 14, 1999.
- (12) Exhibit 9--Three-page handwritten statement of Debra Rine dated June 16, 1999.
- (13) Exhibit 10--Handwritten statement of Janeen Pletcher dated June 15, 1999.
- (14) Exhibit 11--Three-page handwritten statement of Paula Moore dated June 28, 1999.
- (15) Exhibit 12--Copy of two-page Dangerous Drug Distributor Inspection Report of United Ambulance Services, Inc. dated June 28, 1999.
- (16) Exhibit 13--Copy of three-page Dangerous Drug Distributor Inspection Report of Crooksville EMS dated June 30, 1999.
- (17) Exhibit 14--Copy of twenty-nine pages of Genesis Healthcare System EMS Requisitions for Corning EMS dated May 3, 1999; April 12, 1999; April 5, 1999; March 29, 1999; March 14, 1999; March 1, 1999; February 19, 1999; January 24, 1999; December 28, 1998; and February 8, 1999; and copy of four-page alphabetical listing of stock orders.
- (18) Exhibit 15--Copy of three-page Dangerous Drug Distributor Inspection Report of Corning Fire Department Emergency Squad dated July 7, 1999.
- (19) Exhibit 16--Copy of four-page report showing stock orders made by United Ambulance between January 15, 1998, and June 10, 1999; and copy of three-page alphabetical listing of stock orders.
- (20) Exhibit 17--Two-page handwritten statement of Todd Hadorn dated July 13, 1999.
- (21) Exhibit 18--Seventeen-page "Pink Sheet" response from Crooksville EMS dated July 2, 1999.
- (22) Exhibit 19--"Pink Sheet" response from United Ambulance Service, Inc. dated June 30, 1999.
- (23) Exhibit 20--Three-page copy of "Pink Sheet" response from Corning E.M.S. dated July 27, 1999.

Respondent's Exhibits:

- (1) Exhibit A--9 x 12 clasp envelope marked "Crooksville A" containing copies of the following: two-page listing of IV Bag Seal numbers dated October 14, 1999, through April 26, 2000; status sheet of drug boxes returned dated December 8, 1999, through April 29, 2000; three-page "Pink Sheet" response of Crooksville EMS dated July 2, 1999; Medic 211 Inventory, not dated; Crooksville Fire Department Medic 211 Initial inventory dated December 8, 1999; Medic 211 inventory dated December 10, 1999; Stock Drugs/Gray Box Inventory dated December 10, 1999; Expired

drugs destroyed at GSMC Pharmacy dated December 10, 1999; Replacement Drugs From GSMC Pharmacy dated December 10, 1999; Purchased Drugs from GSMC Pharmacy dated December 31, 1999.

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 State Board of Pharmacy indicate that Paul D. Mumma, D.O. is the Responsible Person for Crooksville Emergency Squad pursuant to Ohio Revised Code (ORC) Section 4729.55.
- (2) Crooksville Emergency Squad did, on or about June 30, 1999, and dates preceding, fail to maintain effective control and procedures to deter and detect theft and diversion of dangerous drugs, to wit: dangerous drugs were not stored in an area secured with suitable locks to deter and detect unauthorized access. Though break-away locks were used on drug boxes, replacement locks were stored inside the boxes; and the log books did not adequately indicate usage and/or the signature of the person removing the dangerous drugs. Such conduct is in violation of Ohio Administrative Code (OAC) Rules 4729-9-05 and 4729-9-11.
- (3) Crooksville Emergency Squad did, on or about June 30, 1999, and dates preceding, sell or trade dangerous drugs which were purchased by a public or private hospital, to wit: after having obtained dangerous drugs and other supplies on an "exchange basis" pursuant to ORC Section 4729.54, Crooksville Emergency Squad diverted these drugs to United Ambulance, a "for-profit" entity. Such conduct is in violation of Title 21, Section 353(c) of the United States Code.
- (4) Crooksville Emergency Squad did, on or about June 30, 1999, and dates preceding, by deception, procure the dispensing of a dangerous drug, to wit: when obtaining dangerous drugs from Genesis Hospital, Crooksville Emergency Squad indicated that the drugs were being obtained on an "exchange basis" pursuant to ORC Section 4729.54, yet such drugs had not been used by Crooksville Emergency Squad but were instead being obtained for use by United Ambulance Service, Inc. Such conduct is in violation of ORC Section 2925.22.
- (5) Crooksville Emergency Squad did, on or about June 30, 1999, and dates preceding, fail to keep a record of all dangerous drugs received, administered, dispensed, distributed, or sold, to wit: Crooksville Emergency Squad did not keep records of drugs obtained from Genesis Hospital and subsequently distributed to United Ambulance Service, Inc. Such conduct is in violation of OAC Rule 4729-9-22.
- (6) Crooksville Emergency Squad did, on or about June 30, 1999, and dates preceding, fail to keep a record of all dangerous drugs used, to wit: by method of flushing, Crooksville Emergency Squad destroyed dangerous drugs without maintaining records of such destruction. Such conduct is in violation of OAC Rule 4729-9-22.

- (7) Crooksville Emergency Squad did, on or about June 30, 1999, and dates preceding, cease to satisfy the qualifications of a terminal distributor of dangerous drugs set forth in ORC Section 4729.55, to wit: Crooksville Emergency Squad failed to maintain adequate safeguards to prevent the sale or other distribution of dangerous drugs by unauthorized personnel when the drugs were not stored in an area secured with suitable locks to deter and detect unauthorized access. Such conduct does not conform to ORC Section 4729.55.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2), (5), and (6) of the Findings of Fact constitute being guilty of violating a rule of the Board as provided in Division (A)(2) of ORC Section 4729.57.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (7) of the Findings of Fact constitute violating a provision of ORC Chapter 4729. as provided in Division (A)(3) of ORC Section 4729.57.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3) and (4) of the Findings of Fact constitute violating a provision of the federal drug abuse control laws or ORC Chapter 2925. or 3719. as provided in Division (A)(5) of ORC Section 4729.57.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (7) of the Findings of Fact constitutes ceasing to satisfy the qualifications of a terminal distributor of dangerous drugs set forth in ORC Section 4729.55 as provided in Division (A)(7) of ORC Section 4729.57.

ACTION OF THE BOARD

Pursuant to ORC Section 4729.57, the State Board of Pharmacy takes the following actions in the matter of Crooksville Emergency Squad:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of eleven thousand five hundred dollars (\$11,500.00).
- (B) The Board will stay the monetary penalty imposed in paragraph (A) above provided that Crooksville Emergency Squad meets the following terms:
 - (1) Crooksville Emergency Squad must abide by all federal and state laws and regulations governing the legal distribution of drugs,
 - (2) Crooksville Emergency Squad must abide by the rules of the Ohio State Board of Pharmacy.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-5/Nay-4).
MOTION CARRIED.
SO ORDERED.

ORDER EFFECTIVE JUNE 14, 2000