

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-991116-034)

In The Matter Of:

UNITED AMBULANCE SERVICE, INC.
c/o John R. Kerns, D.O.
815 Main Street
Zanesville, Ohio 43701
(Terminal Distributor No. 02-0387852)

INTRODUCTION

THE MATTER OF UNITED AMBULANCE SERVICE, INC. CAME FOR CONSIDERATION 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.

UNITED AMBULANCE SERVICE, INC. WAS NOT PRESENT, NOR WERE THEY 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) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of four-page Notice of Opportunity for Hearing dated November 16, 1999.
- (2) Exhibit 1A--Two-page copy of Renewal Application for DDD License No. 02-0387850 for a terminal distributor of dangerous drugs license from January 1, 1999, to December 31, 1999, signed by Rebecca S. Clark, M.D., and dated November 11, 1998; copy of Renewal Application for DDD License No. 02-0387851 for a terminal distributor of dangerous drugs license from January 1, 1999, to December 31,

1999, signed by Rebecca S. Clark, M.D., and dated November 12, 1998; and copy of Renewal Application for DDD License No. 02-0387852 for a terminal distributor of dangerous drugs license from January 1, 1999, to December 31, 1999, signed by John R. Kerns, D.O. and dated October 15, 1998.

- (3) 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.
- (4) 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.
- (5) Exhibit 4--Handwritten statement of Marsha Thomas dated June 4, 1999.
- (6) Exhibit 5--Handwritten statement of Glenna J. Alexander dated June 4, 1999.
- (7) Exhibit 6--Two-page handwritten statement of Mitchel Stanley, Jr. dated June 4, 1999.
- (8) 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.
- (9) Exhibit 8--Four-page handwritten statement of William Kelso dated June 14, 1999.
- (10) Exhibit 9--Three-page handwritten statement of Debra Rine dated June 16, 1999.
- (11) Exhibit 10--Handwritten statement of Janeen Pletcher dated June 15, 1999.
- (12) Exhibit 11--Three-page handwritten statement of Paula Moore dated June 28, 1999.
- (13) Exhibit 12--Copy of two-page Dangerous Drug Distributor Inspection Report of United Ambulance Services, Inc. dated June 28, 1999.
- (14) Exhibit 13--Copy of three-page Dangerous Drug Distributor Inspection Report of Crooksville EMS dated June 30, 1999.
- (15) 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.
- (16) Exhibit 15--Copy of three-page Dangerous Drug Distributor Inspection Report of Corning Fire Department Emergency Squad dated July 7, 1999.
- (17) 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.
- (18) Exhibit 17--Two-page handwritten statement of Todd Hadorn dated July 13, 1999.
- (19) Exhibit 18--Seventeen-page "Pink Sheet" response from Crooksville EMS dated July 2, 1999.
- (20) Exhibit 19--"Pink Sheet" response from United Ambulance Service, Inc. dated June 30, 1999.
- (21) Exhibit 20--Three-page copy of "Pink Sheet" response from Corning E.M.S. dated July 27, 1999.

Respondent's Exhibits:

- (1) None

FINDINGS OF FACT

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

- (1) On November 16, 1999, United Ambulance Service, Inc. was notified by letter of its right to a hearing, its rights in such hearing, and its right to submit any contentions in writing.
- (2) As demonstrated by return receipt of November 17, 1999, United Ambulance Services, Inc. received the letter of November 16, 1999, informing it of the allegations against it, and its rights.
- (3) United Ambulance Service, Inc. has not responded in any manner to the letter of November 16, 1999, and has not requested a hearing in this matter.
- (4) Records of the State Board of Pharmacy indicate that John R. Kerns, D.O. is the Responsible Person for United Ambulance Service, Inc., License No. 02-0387852, pursuant to Ohio Revised Code (ORC) Section 4729.55.
- (5) United Ambulance Service, Inc. 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 Rules 4729-9-05 and 4729-9-11 of the Ohio Administrative Code (OAC).
- (6) United Ambulance Service, Inc. did, on or about June 30, 1999, and dates preceding, purchase 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.
- (7) United Ambulance Service, Inc. did, on or about June 30, 1999, and dates preceding, by deception, procure the dispensing of a dangerous drug, to wit: United Ambulance employees obtained dangerous drugs from Genesis Hospital, Crooksville Emergency Squad and/or Corning Fire Department Emergency Squad and 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 either entity but were instead being obtained for use by United Ambulance Service, Inc. Such conduct is in violation of ORC Section 2925.22.

- (8) United Ambulance Service, Inc. 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: United Ambulance Service, Inc. did not keep records of drugs obtained from Crooksville Emergency Squad and/or Corning Fire Department Emergency Squad. Further, records were maintained off-site without United Ambulance Service, Inc. having notified the Board. Such conduct is in violation of OAC Rule 4729-9-22.
- (9) United Ambulance Service, Inc. 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, United Ambulance Service, Inc. destroyed dangerous drugs without maintaining records of such destruction. Such conduct is in violation of OAC Rule 4729-9-22.
- (10) United Ambulance Service, Inc. 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: United Ambulance Service, Inc. 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 (5), (8), and (9) of the Findings of Fact constitute 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 (5) through (10) of the Findings of Fact constitute violating a provision of 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 (6) and (7) of the Findings of Fact constitute violating any 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 (10) 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 United Ambulance Service, Inc.:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor license, No. 02-0387852, held by United Ambulance Service, Inc. effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor license, No. 02-0387852, held by United Ambulance Service, Inc. effective as of the date of the mailing of this Order.
- (C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor license, No. 02-0387852, held by United Ambulance Service, Inc. effective as of the date of the mailing of this Order.
- (D) On the basis of the Findings of Fact and paragraph (4) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor license, No. 02-0387852, held by United Ambulance Service, Inc. effective as of the date of the mailing of this Order.

Division (B)(1) of ORC Section 4729.57 requires that, upon the revocation of a license issued to a terminal distributor of dangerous drugs, the distributor shall immediately surrender the license to the Board. The license should be forwarded by certified mail, return receipt requested.

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

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE JUNE 14, 2000