

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-001004-015)

In The Matter Of:

DICK'S PHARMACY
c/o Richard A. Petrilla, R.Ph.
790 Garland Avenue
Youngstown, Ohio 44506
(Terminal Distributor No. 02-0522050)

INTRODUCTION

THE MATTER OF DICK'S PHARMACY CAME FOR HEARING ON MARCH 6, 2001 BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, 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.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

DICK'S PHARMACY WAS REPRESENTED BY KEVIN L. SHOEMAKER AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) George Pavlich, Ohio State Board of Pharmacy
- (2) Joann Predina, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Richard A. Petrilla, R.Ph., Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1A--Copy of six-page Summary Suspension Order/Notice of Opportunity for Hearing letter dated October 4, 2000.
- (2) Exhibit 1B--Hearing Request letter dated October 13, 2000.
- (3) Exhibit 1C--Copy of Hearing Schedule letter dated October 17, 2000.
- (4) Exhibit 1D--Motion For Continuance and Memorandum In Support for Dick's Pharmacy and Motion For Continuance and Memorandum In Support for Richard A. Petrilla from Kevin L. Shoemaker dated December 26, 2000.
- (5) Exhibit 1E--Copy of Hearing Schedule letter dated December 22, 2000.

- (6) Exhibit 1F--Copy of Pharmacist File Front Sheet for Richard a. Petrilla showing original date of registration as August 4, 1969.
- (7) Exhibit 1G--Copy of two-page Dangerous Drug Distributor computer record for Dick's Pharmacy showing original date of registration as October 1, 1987.
- (8) Exhibit 2--Copy of seven-page "Plea of No Contest with Stipulation of Guilt", Case No. 00CR0760, State of Ohio vs. Richard A. Petrilla, in the Mahoning County Common Pleas Court dated August 17, 2000, with attached copy of "Judgment Entry", State of Ohio vs. Richard A. Petrilla, in the Mahoning County Common Pleas Court dated August 17, 2000.
- (9) Exhibit 4--Copy of six-page Dangerous Drug Distributor Inspection Report of Dick's Pharmacy dated November 25, 1997; and copy of response to the Inspection Report of November 25, 1997.
- (10) Exhibit 5--Copy of ten-page Dangerous Drug Distributor Inspection Report of Dick's Pharmacy dated February 23, 1999; copy of twelve pages from Richard A. Petrilla in response to the Inspection Report of February 23, 1999.
- (11) Exhibit 6--Copy of six-page Dangerous Drug Distributor Inspection Report of Dick's Pharmacy dated March 31, 1999.
- (12) Exhibit 7--Copy of UHC prescription record for Roberto Agosto dated from December 10, 1997 to March 21, 1998; copy of five-page Interview and Statement of Consuelo Mendel, M.D. dated December 6, 1999; copy of five-page Interview and Statement of Dr. Mounir El-Hayek, M.D. dated November 24, 1999; three pages of copies of prescriptions for Roberto Agosto dated from December 10, 1997 to March 31, 1998, copy of eight-page Dick's Pharmacy Patient Profile Printout of Roberto T. Agosto for January 1, 1995 to March 31, 1999.
- (13) Exhibit 8--Copy of seven-page UHC prescription record for Mattie Greer dated from February 13, 1997 to March 25, 1999; copy of ten-page Interview and Statement of James E. Toth, D.O. and Cheryl A. Streb-Baran dated May 8, 2000; thirty-seven pages of copies of prescriptions for Mattie Greer dated from February 13, 1997 to March 25, 1999; copy of nineteen-page Dick's Pharmacy Patient Profile Printout of Mattie Greer for January 1, 1998 to March 31, 1999.
- (14) Exhibit 9--Copy of two-page UHC prescription record for Doris Cowart dated from August 7, 1998 to February 11, 1999; copy of five-page Interview and Statement of Fred Pruitt, M.D. and Flora Pulliam dated May 24, 2000; six pages of copies of prescriptions for Doris Cowart dated from August 7, 1998 to February 11, 1999; copy of six-page Dick's Pharmacy Patient Profile Printout of Doris Cowart for March 1, 1998 to March 31, 1999.
- (15) Exhibit 10--Copy of two-page UHC prescription record for Thirty Price dated from October 9, 1997 to February 8, 1999; copy of ten-page Interview and Statement of T. K. Rawa, M.D. and Mary Steger, R.N. dated May 22, 2000; copy of seven-page Interview and Statement of Suman K. Mishr, M.D. dated May 23, 2000; eighteen pages of copies of prescriptions for Thirty Price dated from October 9, 1997 to February 8, 1999; copy of three-page Dick's Pharmacy Patient Profile Printout of Thirty Price for January 1, 1997 to February 23, 1999.
- (16) Exhibit 11--Copy of seven-page UHC prescription record for Reed Taylor dated from January 6, 1998 to January 25, 1999; copy of twelve-page Interview and Statement of Fred Pruitt, M.D. and Flora Pulliam dated May 24, 2000; twenty-five pages of copies of prescriptions for Reed Taylor dated from January 7, 1998 to February 8, 1999; copy of twenty-three-page Dick's Pharmacy Patient Profile Printout of Reed Taylor for January 1, 1998 to March 31, 1999.

- (17) Exhibit 12--Copy of nineteen pages of UHC prescription records with handwritten notes for Roberto Agosto, Doris Cowart, Thirty Price, Reed Taylor, and Mattie Greer.
- (18) Exhibit 13--Twenty-page copy of Transcript of Tape-recorded Interview of Richard Petrella(*sic*), R.Ph. on February 23, 1999.

Respondent's Exhibits:

- (1) Exhibit A--Copy of Prescription No. 289746 for Thirty B. Price by Suman K. Mishr, M.D. dated May 7, 1997.
- (2) Exhibit B--Letter from Richard M. Kalapos, D.O. dated February 20, 2001.
- (3) Exhibit C--Statement of Martha Lampley, Dora Hill, and Marilyn Brown dated March 1, 2001.
- (4) Exhibit D--Affidavit of Reed Taylor dated March 1, 2001.
- (5) Exhibit E--Affidavit of Thirty B. Price dated March 1, 2001.
- (6) Exhibit F--Statement of Doris Cowart, not dated.
- (7) Exhibit G--Statement of Mattie Greer, not dated.
- (8) Exhibit H--Copy of letter from Robert Duffrin dated March 6, 2001.

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 Richard A. Petrilla is the Responsible Pharmacist at Dick's Pharmacy pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) Dick's Pharmacy did, from on or about February 21, 1998, through March 21, 1998, intentionally make, utter, or sell false or forged prescriptions, to wit: Dick's Pharmacy created twelve prescriptions for Patient #1 and maintained them on file so as to cover false insurance billings. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (3) Dick's Pharmacy did, from on or about February 21, 1998, through March 21, 1998, sell at retail a dangerous drug, when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on twelve occasions throughout this time period, Dick's Pharmacy sold dangerous drugs to Patient #1 without a valid prescription from a licensed health professional authorized to prescribe drugs and/or without a legitimate purpose. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.
- (4) Dick's Pharmacy did, from on or about April 27, 1998, through March 23, 1999, intentionally make, utter, or sell false or forged prescriptions, to wit: Dick's Pharmacy created 253 prescriptions for Patient #2 and maintained them on file so as to cover false insurance billings. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

- (5) Dick's Pharmacy did, from on or about April 27, 1998, through March 23, 1999, sell at retail a dangerous drug, when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on 253 occasions throughout this time period, Dick's Pharmacy sold dangerous drugs to Patient #2 without a valid prescription from a licensed health professional authorized to prescribe drugs and/or without a legitimate purpose. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.
- (6) Dick's Pharmacy did, from on or about August 7, 1998, through February 11, 1999, intentionally make, utter, or sell false or forged prescriptions, to wit Dick's Pharmacy created twelve prescriptions for Patient #3 and maintained them on file so as to cover false insurance billings. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (7) Dick's Pharmacy did, from on or about August 7, 1998, through February 11, 1999, sell at retail a dangerous drug, when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on twelve occasions throughout this time period, Dick's Pharmacy sold dangerous drugs to Patient #3 without a valid prescription from a licensed health professional authorized to prescribe drugs and/or without a legitimate purpose. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.
- (8) Dick's Pharmacy did, from on or about November 29, 1997, through February 8, 1999, intentionally make, utter, or sell, false or forged prescriptions, to wit: Dick's Pharmacy created 35 prescriptions for Patient #4 and maintained them on file so as to cover false insurance billings. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (9) Dick's Pharmacy did, from on or about November 29 1997, through February 8, 1999, sell at retail a dangerous drug, when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on 35 occasions throughout this time period, Dick's Pharmacy sold dangerous drugs to Patient #4 without a valid prescription from a licensed health professional authorized to prescribe drugs and/or without a legitimate purpose. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.
- (10) Dick's Pharmacy did, from on or about January 6, 1998, through January 25, 1999, intentionally make, utter, or sell false or forged prescriptions, to wit: Dick's Pharmacy created 244 prescriptions for Patient #5 and maintained them on file at Dick's Pharmacy so as to cover false insurance billings. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (11) Dick's Pharmacy did, from on or about January 6, 1998, through January 25, 1999, sell at retail a dangerous drug, when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on 244 occasions throughout this time period, Dick's Pharmacy sold dangerous drugs to Patient #5 without a valid prescription from a licensed health professional authorized to prescribe drugs and/or without a legitimate purpose. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3), (5), (7), (9), and (11) 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.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3), (5), (7), (9), and (11) of the Findings of Fact constitute violating Chapter 4729. of the Revised Code as provided in Division (A)(3) of Section 4729.57 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (11) of the Findings of Fact constitute violating the provisions of the federal drug abuse control laws or Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.57 of the Ohio Revised Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (11) of the Findings of Fact constitute ceasing to satisfy the qualifications of a terminal distributor of dangerous drugs set forth in Section 4729.55 of the Revised Code as provided in Division (A)(7) 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 Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes on Dick's Pharmacy a monetary penalty of twenty-five thousand dollars (\$25,000.00). The monetary penalty is due and owing within thirty days of the mailing of this Order. The remittance should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-5/Nay-3).

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE APRIL 4, 2001