



OHIO STATE BOARD OF PHARMACY

77 South High Street, Room 1702; Columbus, OH 43215-6126

-Equal Opportunity Employer and Service Provider-

TEL: 614/466-4143

E-MAIL: exec@bop.state.oh.us

FAX: 614/752-4836

TTY/TDD: Use the Ohio Relay Service: 1-800/750-0750

URL: <http://www.pharmacy.ohio.gov>

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-070412-040)

In The Matter Of:

CARINGWELL PHARMACY

c/o Jae-Seung Lee, R.Ph.
7679 Windsor Drive
Dublin, Ohio 43016
(T.D.D.D. No. 02-1428000)

INTRODUCTION

THE MATTER OF CARINGWELL PHARMACY CAME FOR HEARING ON OCTOBER 10, 2007, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: GREGORY BRAYLOCK, R.Ph. (presiding); ELIZABETH I. GREGG, R.Ph.; RICHARD F. KOLEZYNSKI, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; HEATHER L. PASQUALE, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; JAMES E. TURNER, R.Ph.; AND JEROME J. WIESENHAHN, R.Ph.

CARINGWELL PHARMACY WAS REPRESENTED BY EDWARD S. KIM. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witness

1. Robert Amiet, Jr., R.Ph., Ohio State Board of Pharmacy

Respondent's Witness

1. Jae-Seung Lee, R.Ph., Respondent

State's Exhibits

- 1C. Summary Suspension Order/Notice of Opportunity For Hearing letter [04-12-07]
1C,1L-A. Hearing Request letter from Jae-Seung Lee [04-23-07]
1C,1L-B. Hearing Schedule letter [04-24-07]
1C,1L,1RPh-C. Hearing Continuance Request letter from Edward S. Kim [09-10-07]
1C-D. Hearing Continuance letter [09-13-07]
1C-E. Hearing Schedule letter [09-28-07]
1C-F. Dangerous Drug Distributor computer record of Caringwell Pharmacy [10-03-07]
2. Caringwell Pharmacy and Jae Lee's Prescription Data for November 2006
3. Three Graphs of Caringwell Pharmacy's Average Number of Prescriptions Per Day, Out-of-State Sales, Percentage of Controlled Substances [November 2006 to March 2007]

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- 4. Two Colored Maps of the United States showing Legitimate Prescription Prescribers for Caringwell Pharmacy and Jae Lee, R.Ph. [not dated]
- 5. Two Colored Maps of the United States showing Internet Prescription Prescribers for Caringwell Pharmacy and Jae Lee, R.Ph. [not dated]
- 6. List of Prescribers that Caringwell Pharmacy and Jae Lee, R.Ph. dispensed prescriptions for from December 2006 to March 2007; List of Number of Prescriptions Dispensed by each State from December 2006 to March 2007
- 7. Internet Prescription Orders #443074, #443071 and #443076 from Jeffrey White, M.D. of Florida [11-25-06]
- 8. Internet Rx #6466 [12-26-06], Rx #6455 [12-26-06] and Rx #13805 [03-27-07] from Nancy E. Tice, D.O. of New York
- 9. Internet Rx #6495 [12-26-06], Rx #6471 [12-26-06] and Rx #6475 [12-26-06] from Shelly A. Hope
- 9A. Internet Rx #13908 [03-28-07], Rx #13909 [03-28-07] and Rx #13903 [03-28-07] from Michael Feinberg of Florida
- 10. List of Caringwell and Jae Lee, R.Ph. Dispensing Date [11-29-06 to 03-29-07]
- 11. Seven color photographs of Caringwell Pharmacy [not dated]
- 12. Two Dangerous Drug Distributor Inspection Reports of Caringwell Pharmacy [03-27-07 and 03-29-07]
- 13-14. Two notarized statements of Jae-Sung (Sic) Lee [03-29-07]
- 15. Application for Registration As A Terminal Distributor of Dangerous Drugs for RPH Care, Inc. [02-14-07]

Respondent's Exhibits

None

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 Board of Pharmacy indicate that Caringwell Pharmacy is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs and that Caringwell Pharmacy's license was summarily suspended on April 12, 2007. Records further reflect during the relevant time periods stated herein, Jae-Seung Lee was the Responsible Pharmacist pursuant to Rule 4729-5-11 of the Ohio Administrative Code and Sections 4729.27 and 4729.55 of the Ohio Revised Code.

(2) Caringwell Pharmacy did, from November 29, 2006, through March 29, 2007, a period of 120 days, knowingly sell controlled substances when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Caringwell Pharmacy dispensed the following Controlled Substances without valid prescriptions. Practically all the following prescriptions were generated from Internet websites by out-of-state physicians for patients that reside in other states:

CONTROLLED SUBSTANCE	No. OF Rxs	QTY. OF DRUG
hydrocodone/APAP 10/325 mg tablets	3231	348,480
hydrocodone/APAP 10/500 mg tablets	1412	154,336

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CONTROLLED SUBSTANCE	No. OF Rxs	QTY. OF DRUG
hydrocodone/APAP 7.5/500 mg tablets	109	11,010
hydrocodone/APAP 7.5/750 mg tablets	193	19,530
hydrocodone/APAP 10/650 mg tablets	550	62,570
hydrocodone/ APAP 10/660 mg tablets	15	1,800
TOTAL	5510	597,226
alprazolam 1 mg tablets	82	6,330
alprazolam 2 mg tablets	527	46,890
TOTAL	609	53,220
diazepam 10 mg tablets	205	16,265

Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

(3) Caringwell Pharmacy did, on or about March 29, 2007, and dates immediately preceding, fail to ensure that only a pharmacist had access to the prescription department and stock of dangerous drugs in the pharmacy, to wit: Caringwell Pharmacy permitted a technician to possess a key to the pharmacy and open the pharmacy without a pharmacist being present. When Board of Pharmacy agents arrived at Caringwell Pharmacy, two technicians were in the pharmacy, but there was no pharmacist on site. The technicians admitted that one had been given a pharmacy key so he could open that morning. After the technician phoned the responsible pharmacist, he arrived approximately ten minutes later. During an inspection of Caringwell Pharmacy on the previous day, the responsible pharmacist stated that no one other than a pharmacist possessed keys to the pharmacy, and he also signed the inspection report which included that statement. Such conduct is in violation of Rule 4729-9-11 of the Ohio Administrative Code.

(4) Caringwell Pharmacy did, on or about March 27, 2007, and on dates immediately preceding, permit a person other than a registered pharmacist or a pharmacy intern under the personal supervision of a pharmacist to sell dangerous drugs and/or otherwise engage in the practice of pharmacy, to wit: the pharmacy admittedly permitted a pharmacy technician to dispense drugs without a pharmacist being present. Further, a pharmacy technician began working at the pharmacy in March of 2005, while the responsible pharmacist worked at Apria Healthcare and Pure Service between May 2004 and October 2006, and during that time had allowed Richard Kim to be an "acting pharmacist" approximately three months or so. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes 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 (2) through (4) of the Findings of Fact constitute violating any

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provision of this chapter 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 paragraph (2) and of the Findings of Fact constitutes violating provisions of the federal drug abuse control laws and Chapter 3719. of the Revised Code as provided in Division (A)(5) of Section 4729.57 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.57 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Caringwell Pharmacy as follows:

(A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the terminal distributor license, No. 02-1428000, held by Caringwell Pharmacy 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, the State Board of Pharmacy hereby revokes permanently the terminal distributor license, No. 02-1428000, held by Caringwell Pharmacy 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, the State Board of Pharmacy hereby revokes permanently the terminal distributor license, No. 02-1428000, held by Caringwell Pharmacy effective as of the date of the mailing of this Order.

Caringwell Pharmacy, pursuant to Section 4729.57(C)(1) of the Ohio Revised Code, must return the license to the office of the State Board of Pharmacy immediately after receipt of this Order. The license should be sent 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.

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

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.

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Such an appeal, setting forth the order appealed from and the grounds of the appeal, must be commenced by the filing of the ORIGINAL Notice of Appeal with the State Board of Pharmacy and a copy with 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 MAILED & EFFECTIVE: NOVEMBER 7, 2007

By: _____
William T. Winsley, M.S., R.Ph., Executive Director

WTW/lf

CERTIFIED MAIL/Return Receipt
7004 2510 0006 9804 2901

c: Sally Ann Steuk, Assistant Attorney General
Edward S. Kim, Attorney for Respondent; 400 South Fifth Street, Suite 200; Columbus,
Ohio 43215