

THE STATE BOARD OF PHARMACY

VS

ROBERT S. BERMAN, R.Ph.

THE MATTER OF ROBERT S. BERMAN, DOCKET NO. 6-101-1, WAS HEARD PURSUANT TO CHAPTERS 119. AND 4729. OF THE REVISED CODE ON WEDNESDAY, JUNE 26th, AND THURSDAY, JUNE 27th, 1985. AFTER CONSIDERATION OF THE EVIDENCE ADDUCED, MOTIONS WERE MADE AND RECORDED THAT THE FOLLOWING ORDER BE ADOPTED:

ORDER

Findings Of Fact

- (1) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about February 3, 1983, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, knowingly sell approximately four ounces of Terpin Hydrate and Codeine, a Schedule V controlled substance, in an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code, when he knew, or could by reasonable diligence have ascertained, that such sale would provide the person to whom such preparation was sold within 48 consecutive hours with more than four grains of codeine or any of its salts, or would provide such person within 48 consecutive hours with more than one preparation; in violation of Section 3719.16 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.
- (2) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about February 10, 1983, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, knowingly sell approximately four ounces of Terpin Hydrate and Codeine, a Schedule V controlled substance, in an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code, when he knew, or could by reasonable diligence have ascertained, that such sale would provide the person to whom such preparation was sold within 48 consecutive hours with more than four grains of codeine or any of its salts, or would provide such person within 48 consecutive hours with more than one preparation; in violation of Section 3719.16 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.

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- (3) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about April 5, 1983, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, knowingly sell approximately four ounces of Terpin Hydrate and Codeine, a Schedule V controlled substance, in an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code, when he knew, or could by reasonable diligence have ascertained, that such sale would provide the person to whom such preparation was sold within 48 consecutive hours with more than four grains of codeine or any of its salts, or would provide such person within 48 consecutive hours with more than one preparation; in violation of Section 3719.16 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.
- (4) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about May 18, 1983, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, knowingly sell approximately four ounces of Terpin Hydrate and Codeine, a Schedule V controlled substance, in an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code, when he knew, or could by reasonable diligence have ascertained, that such sale would provide the person to whom such preparation was sold within 48 consecutive hours with more than four grains of codeine or any of its salts, or would provide such person within 48 consecutive hours with more than one preparation; in violation of Section 3719.16 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.
- (5) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about November 17, 1983, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, knowingly sell approximately four ounces of Terpin Hydrate and Codeine, a Schedule V controlled substance, in an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code, when he knew, or could by reasonable diligence have ascertained, that such sale would provide the person to whom such preparation was sold within 48 consecutive hours with more than four grains of codeine or any of its salts, or would provide such person within 48 consecutive hours with more than one preparation; in violation of Section 3719.16 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.

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- (6) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about January 12, 1984, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, knowingly sell approximately four ounces of Terpin Hydrate and Codeine, a Schedule V controlled substance, in an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code, when he knew, or could by reasonable diligence have ascertained, that such sale would provide the person to whom such preparation was sold within 48 consecutive hours with more than four grains of codeine or any of its salts, or would provide such person within 48 consecutive hours with more than one preparation; in violation of Section 3719.16 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.

- (7) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about January 21, 1984, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, knowingly sell approximately four ounces of Terpin Hydrate and Codeine, a Schedule V controlled substance, in an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code, when he knew, or could by reasonable diligence have ascertained, that such sale would provide the person to whom such preparation was sold within 48 consecutive hours with more than four grains of codeine or any of its salts, or would provide such person within 48 consecutive hours with more than one preparation; in violation of Section 3719.16 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.

- (8) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about January 27, 1984, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, knowingly sell approximately four ounces of Terpin Hydrate and Codeine, a Schedule V controlled substance, in an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code, when he knew, or could by reasonable diligence have ascertained, that such sale would provide the person to whom such preparation was sold within 48 consecutive hours with more than four grains of codeine or any of its salts, or would provide such person within 48 consecutive hours with more than one preparation; in violation of Section 3719.16 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.

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- (9) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about February 17, 1984, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, knowingly sell approximately four ounces of Terpin Hydrate and Codeine, a Schedule V controlled substance, in an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code, when he knew, or could by reasonable diligence have ascertained, that such sale would provide the person to whom such preparation was sold within 48 consecutive hours with more than four grains of codeine or any of its salts, or would provide such person within 48 consecutive hours with more than one preparation; in violation of Section 3719.16 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.
- (10) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about February 18, 1984, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, knowingly sell approximately four ounces of Terpin Hydrate and Codeine, a Schedule V controlled substance, in an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code, when he knew, or could by reasonable diligence have ascertained, that such sale would provide the person to whom such preparation was sold within 48 consecutive hours with more than four grains of codeine or any of its salts, or would provide such person within 48 consecutive hours with more than one preparation; in violation of Section 3719.16 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.
- (11) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about February 24, 1984, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, knowingly sell approximately four ounces of Terpin Hydrate and Codeine, a Schedule V controlled substance, in an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code, when he knew, or could by reasonable diligence have ascertained, that such sale would provide the person to whom such preparation was sold within 48 consecutive hours with more than four grains of codeine or any of its salts, or would provide such person within 48 consecutive hours with more than one preparation; in violation of Section 3719.16 of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.

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- (12) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, as the president of the corporation which owns and operates Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, purchase dangerous drugs for resale from a person not registered as a wholesale distributor of dangerous drugs, to wit: on or about March 1, 1984, approximately 108 tablets of Capoten-25mg and approximately 280 dosage units of Inderal were purchased from Alfred D'Anniballe; in violation of Section 4729.51(D) of the Revised Code.
- (13) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about March 1, 1984, receive in commerce drugs that were misbranded and hold such drugs for sale, in violation of Section 3715.52 of the Revised Code, to wit: approximately 108 tablets of Capoten-25mg and approximately 280 dosage units of Inderal.
- (14) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about September 6, 1983, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, without a valid prescription, dispense approximately 50 tablets of Darvocet-N100, a Schedule IV controlled substance and prescription drug, in an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.
- (15) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about April 18, 1983, June 3, 1983, and August 22, 1983, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, without a valid prescription, dispense approximately 300 tablets of Valium-5mg, a Schedule IV controlled substance and prescription drug, in an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Sections 3715.52(L) and 3719.05(A) of the Revised Code. Such conduct is prohibited by Section 2925.03(A)(1) of the Revised Code.
- (16) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on one or more occasions between the dates of August 4, 1983 and August 29, 1983, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, distribute by dispensing a Schedule IV controlled substance when he knew, or had reasonable cause to believe, such drugs were not being possessed for legitimate medical purposes by a patient; in that, approximately 400 tablets of Tylenol #4 were dispensed within a period of approximately 25 days. Such conduct was not in accordance with Chapter 3715. of the Revised Code, and is prohibited by Section 2925.03(A)(2) of the Revised Code.

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- (17) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on one or more occasions between September 24, 1983 and October 18, 1983, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, distribute by dispensing a Schedule IV controlled substance when he knew, or had reasonable cause to believe, such drugs were not being possessed for legitimate medical purposes by a patient; in that, a fifty-day supply (300 tablets) of Empirin #4 was dispensed within a period of approximately 24 days. Such conduct was not in accordance with Revised Code Chapter 3715., and is prohibited by Section 2925.03(A)(2) of the Revised Code.
- (18) From the evidence presented, the State Board of Pharmacy finds that Robert S. Berman did, on or about February 3, 1983, at Distributors Pharmacy, Inc., 3366 E. 55th Street, Cleveland, Ohio 44127, distribute by dispensing a Schedule II controlled substance when he knew, or had reasonable cause to believe, such drugs were not being possessed for legitimate medical purposes by a patient or prescribed by a practitioner for legitimate medical purposes in the course of his/her professional practice; in that, approximately 200 doses of Preludin-75mg were dispensed within a period of approximately 28 days. Such conduct was not in accordance with Revised Code Chapter 3715., and is prohibited by Section 2925.03(A)(2) of the Revised Code.

Conclusions Of Law

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (1) through (18) of the Findings Of Fact constitutes gross immorality, within the meaning of Section 4729.16(A)(1) of the Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (12) through (15) of the Findings Of Fact constitutes dishonesty and unprofessional conduct in the practice of pharmacy.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (1) through (18) of the Findings Of Fact constitutes willfully violating the provisions of Chapters 2925., 3715., 3719., and 4729. of the Revised Code.

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Pursuant to Section 4729.16 of the Ohio Revised Code, and the foregoing Findings Of Fact and Conclusions Of Law set forth above, the State Board of Pharmacy hereby takes the following actions concerning the registered pharmacist license of Robert S. Berman:

(A) On the basis of paragraphs (1) and (2) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card of Robert S. Berman for 24 months.

(B) On the basis of paragraph (3) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of two thousand five hundred dollars (\$2,500), due and owing within thirty (30) days of the issuance of this Order. Said monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed to the State Board of Pharmacy, 65 S. Front Street, Room 504, Columbus, Ohio 43266-0320, with the enclosed form.

(C) Further, the 24-month suspension shall commence on September 1, 1985, and the Board shall suspend 12 months of the suspension, effective September 1, 1986, on condition that Robert S. Berman abides by the terms of probation set by the Board. The terms of probation provide that Robert S. Berman:

(1) take and successfully complete a jurisprudence examination offered by the Board during its August, 1986 meeting;

(2) does not violate any drug laws of the state of Ohio, any other state, or the federal government; and

(3) abides by the rules of the State Board of Pharmacy.

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part that: "Any individual whose identification card is ..., suspended, ..., shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days ... (of the effective date of the suspension)." The certificate and identification card should be forwarded by certified mail, return receipt requested.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.