



OHIO STATE BOARD OF PHARMACY

77 S. High Street, 17th Floor
Columbus, Ohio 43266-0320
Telephone: 614/466-4143

THE STATE BOARD OF PHARMACY
(Docket No. D-890920-049)

In The Matter Of:

EMIL S. BERGGRUN, R.Ph.
3733 Silsby Road
University Heights, Ohio 44118
(R.Ph. No. 03-1-05967)

INTRODUCTION

THE MATTER OF EMIL S. BERGGRUN CAME TO HEARING ON JANUARY 25, 1990 BEFORE THE FOLLOWING MEMBERS OF THE BOARD: TIMOTHY MOORE, R.Ph. (presiding); GERALD CLOUSE, R.Ph.; METTA LOU HENDERSON, R.Ph.; BETTY NICHOL, R.Ph.; JOSEPH SABINO, R.Ph.; AND ROBERT VALENTINE, R.Ph.

EMIL S. BERGGRUN WAS REPRESENTED BY RICHARD A. FROMSON, AND THE STATE OF OHIO WAS REPRESENTED BY STEVE DLOTT, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Christopher K. Reed - Board of Pharmacy

Respondent's Witnesses:

- (1) Emil S. Berggrun - Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit A - Notice of Opportunity letter for Family Prescription Service dated September 20, 1989.
(2) Exhibit B - Notice of Opportunity letter for Emil S. Berggrun, R.Ph. dated September 20, 1989.
(3) Exhibit C - Request for Hearing letter for Family Prescription Service, Inc. and Emil S. Berggrun, R.Ph. dated October 2, 1989.
(4) Exhibit D - Hearing Schedule letter for Family Prescription Service, Inc. and Emil S. Berggrun, R.Ph. dated October 5, 1989.

- (5) Exhibit 1 - Terminal Distributor of Dangerous Drugs renewal applications for Family Prescription Service from 1983-1988, and Application for Registration as a Terminal Distributor of Dangerous Drugs for Family Prescription Service dated November 18, 1982.
- (6) Exhibit 2 - Pharmacist front sheet for Emil Scott Berggrun showing original licensure date of August 8, 1955.
- (7) Exhibit 3 - Ohio State Board of Pharmacy Order for Emil S. Berggrun dated April 5, 1980.
- (8) Exhibit 4 - Certified copy of Judgment/Journal Entry from the Parma Municipal Court, Case No. 89-CR-B-1198 (7), for Emil S. Berggrun dated June 16, 1989.
- (9) Exhibit 5 - Misbranded drugs as follows: 39 tablets Cardizem 120mg, 335 tablets Proventil 4mg, 163 tablets Proventil 4mg, 93 tablets Bumex 1mg, 54 tablets Zantac 150mg, 1 loz-jar Lotrisone Cream, 6 30gm-jars Lotrisone Cream, 1 6oz-jar Lotrisone Cream, 1 16oz-jar Elocon Cream .1%, 3 8oz-jars Elocon Cream .1%, 1 loz-jar Elocon Cream .1%, 1 6oz-jar Diprolene Cream .05%, and 1 3oz-jar Diprolene Cream .05%.
- (10) Exhibit 6 - Prescription number 574064 dated 7-22-87, 574542 dated 8-10-87, 580502 dated 03-21-88, 585214 date unknown, 579703 dated 02-23-88, 580577 date unknown, 584977 dated 9-28-88, and 585019 dated 09-29-88.
- (11) Exhibit 7 - Statement from Emil S. Berggrun, R.Ph. dated 04-25-89.

Respondent's Exhibits:

- (1) Exhibit 1 - Letter from Robert A. George, M.D. dated 10/17/89; letter from Rupert May, M.D. dated January 15, 1990; letter from Donald R. Blair, D.D.S. dated 11/9/89; letter from Robert A. George, M.D. dated January 16, 1990; letter from William E. Kay, M.D. dated November 10, 1989; Letter from Laurence Lee Cockerville, Jr, M.D. dated 11-11-89; letter from Frederick R. Schnell, M.D. dated January 20, 1990; letter from E. Graham Lampert, M.D. dated January 17, 1990; letter from James D. Corcoran, D.D.S. dated January 22, 1990; and letter from James J. Edwards, M.D. dated January 22, 1990.

FINDINGS OF FACT

- (1) From the evidence presented, the State Board of Pharmacy finds that records of the Board of Pharmacy indicate that Emil S. Berggrun was initially licensed in the state of Ohio pursuant to examination on August 8, 1955; that he was the responsible pharmacist at Family Prescription Service, 5500 Ridge Road, Parma, Ohio 44129, pursuant to Section 4729.27 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code; and, that on April 5, 1980, this Board took action against his license to practice pharmacy for having violated provisions of Chapters 3715. and 3719. of the Ohio Revised Code.

- (2) From the evidence presented, the State Board of Pharmacy finds that Emil S. Berggrun was, on or about June 15, 1989, convicted in the Parma Municipal Court of two counts of Illegal Distribution of Drug Samples in violation of Section 620.08 of the Parma Municipal Code, misdemeanors of the second degree.
- (3) From the evidence presented, the State Board of Pharmacy finds that Emil S. Berggrun did, on or about April 25, 1989, hold or offer to sell drugs that were misbranded, to wit: Emil S. Berggrun possessed drugs on the shelves in the Family Prescription Service pharmacy that were misbranded pursuant to Section 3715.64 in that labels were incomplete and/or not affixed. Such conduct is in violation of Section 3715.52(A) of the Ohio Revised Code.
- (4) From the evidence presented, the State Board of Pharmacy finds that Emil S. Berggrun did, on or about the following dates, sell a controlled substance in an amount equal to or exceeding three times the bulk amount when his conduct was not in accordance with Chapters 3719., 4715., 4729., 4731., and 4741. of the Revised Code, to wit: Emil S. Berggrun sold Cocaine Hydrochloride in Brompton's Solution pursuant to the following prescriptions after the date such was declared not to be a legitimate medical purpose:

<u>Rx No.</u>	<u>Date</u>	<u>Qty.</u>
574064	7-22-87	300 ml
574542	8-10-87	300 ml
580502	3-21-88	300 ml
585214	unknown	300 ml

and, as the responsible pharmacist, Mr. Berggrun was responsible for the following sales:

<u>Rx No.</u>	<u>Date</u>	<u>Qty.</u>
579703	2-23-88	300 ml
580577	unknown	300 ml
584977	9-28-88	100 ml
585019	9-29-88	300 ml

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio 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 (2) through (4) of the Findings Of Fact constitutes dishonesty and unprofessional conduct in the practice of pharmacy as provided in division (A)(2) of Section 4729.16 of the Ohio Revised Code.

- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraph (2) of the Findings Of Fact constitutes being convicted of a misdemeanor related to, or committed in, the practice of pharmacy as provided in division (A)(4) of Section 4729.16 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (3) and (4) of the Findings Of Fact constitutes willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of the provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code as provided in division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ORDER

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions concerning the pharmacist license, No. 03-1-05967, held by Emil S. Berggrun:

(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 Emil S. Berggrun for twelve months, effective April 1, 1990.

(B) On the basis of paragraph (4) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of one thousand dollars (\$1,000.00), due and owing within thirty (30) days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed to the State Board of Pharmacy, 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0320, with the enclosed form.

(C) Further, the Board will suspend eleven months of the twelve-month suspension imposed in paragraph (A) above and place the pharmacist identification card held by Emil S. Berggrun on probation for twelve months on the conditions that Mr. Berggrun successfully complete the Jurisprudence examination offered by the Board.

Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that Emil S. Berggrun's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns for a period of twelve months.

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

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ten days after [effective date] ... of such action." 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.

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 Revised Code authorizes an appeal from this Order. Such an appeal may be taken to the court of common pleas in the county in which your place of business is located or to said court of the county in which you reside. If you do not have a place of business in Ohio and are not a resident of Ohio, you may appeal to the Court of Common Pleas in Franklin County, Ohio.

Such an appeal, setting forth the order appealed from and the grounds of the appeal, must be commenced by the filing of a Notice of Appeal with the State Board of Pharmacy and the appropriate court within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

CERTIFIED MAIL
Return Receipt
#P 497 578 671

ORDER MAILED: MARCH 19, 1990

FZW/pw

By


Franklin Z. Wickham, Executive Director

cc: Steve Dlott, Assistant Attorney General
Richard A. Fromson, Attorney for Respondent, Law Office of Hertz,
Kates, Friedman & Kammer, 1020 Leader Building, Cleveland, Ohio
44114-1477