



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-041008-034)

In The Matter Of:

NEIL D. FRASCA, R.Ph.
2613 Birchwood Drive
Youngstown, Ohio 44515
(R.Ph. No. 03-1-08449)

INTRODUCTION

THE MATTER OF NEIL D. FRASCA CAME FOR HEARING ON MAY 2, 2005, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: LAWRENCE J. KOST, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

NEIL D. FRASCA WAS REPRESENTED BY DAVID W. GRAUER. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witness

1. Joanne Predina, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses

1. Paul Witkowski, M.S., R.Ph.
2. Neil D. Frasca, R.Ph., Respondent

State's Exhibits

1. Notice of Opportunity For Hearing letter [10-08-04]
1A-1F. Procedurals
2. Tod Children's Hospital Neonatal Parenteral Nutrition Orders for bag No. 2 [03-06-04]
3. Baxa MicroMacro Compounder MixCheck (tm) Report [03-06-04]
4. Copy of Compounded Label from TPN Bag Serial No. 000933 [03-06-04]
5. ARUP Laboratories Report for I.D. #(11339)00-000-2984 [03-06-04]
6. ARUP Laboratories Report for I.D. #(11339)00-000-2962 [03-06-04]
7. TPN Error Report from Pharmacy Director Hugh Owen [05-11-04]
8. Notarized Statement of Neil D. Frasca [05-11-04]
9. Tod Children's Hospital Neonatal Parenteral Nutrition Orders for bag No. 61 [03-06-04]
- 9A. Tod Children's Hospital Neonatal Parenteral Nutritional faxed Orders for bag No. 61 [03-06-04]

10. Baxa MicroMacro Compounder MixCheck (tm) Report [03-06-04]
11. Copy of Compounded Label from TPN Bag Serial No. 000937 [03-06-04]
12. ARUP Laboratories Report for I.D. #(11339)00-000-2985 [03-06-04]

Respondent's Exhibits

- A. Biography of Paul Witkowski, Pharm.D. [04-28-05]
- B. Copy of letter, with attachments from David W. Grauer to William T. Winsley[03-07-05]
- C. Resume of Neil D. Frasca [04-25-05]
- D. Forum Health Job Description for Lead Pharmacist [Revised December 2000, December 2003]; Performance Appraisal of Neil Frasca [06-11-04]; Performance Appraisal for Neil Frasca [04-14-05]
- E. Letter from Daniel Testa, R.Ph. [11-16-04]

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 Neil D. Frasca was originally licensed by the State of Ohio as a pharmacist on August 16, 1965, pursuant to examination, and is currently licensed to practice pharmacy in Ohio.
- (2) Neil D. Frasca did, on or about March 6, 2004, misbrand a drug, to wit: when Neil D. Frasca received an order for a TPN (total parenteral nutrition) preparation which was to contain Zantac, he dispensed a preparation containing insulin instead, which had not been prescribed by the physician. The patient, a baby girl, was subsequently harmed. The Board further finds that the testimony of Paul Witkowski, a witness called by the Respondent, was not entirely believed. Mr. Witkowski's expertise in the field is not recognized to be above that of this Board. Mr. Witkowski's testimony was in part comprised of speculation, and he himself recognized this fact. The preparation did not contain a drug that it should have, and it also contained a drug it should not have contained. As such, the preparation was misbranded. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (3) Neil D. Frasca did, on or about March 6, 2004, misbrand a drug, to wit: when Neil D. Frasca received an order for a TPN (total parenteral nutrition) preparation which was to contain heparin, he dispensed a preparation containing insulin instead, which had not been prescribed by the physician. The patient, a baby boy, was subsequently harmed. As above, the Board further finds that the testimony of Paul Witkowski, a witness called by the Respondent, was not entirely believed. Mr. Witkowski's expertise in the field is not recognized to be above that of this Board. Mr. Witkowski's testimony was in part comprised of speculation, and he himself recognized this fact. The preparation did not contain a drug that it should have, and it also contained a drug it should not have contained. As such, the preparation was misbranded. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

CONCLUSION OF LAW

The State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Neil D. Frasca as follows:

- (A) On the basis of the Findings of Fact and Conclusion of Law set forth above, the State Board of Pharmacy hereby imposes on Neil D. Frasca a monetary penalty of five hundred dollars (\$500.00) due and owing within thirty days of the issuance of this Order. The monetary penalty 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.
- (B) Neil D. Frasca must obtain, within one hundred-eighty days from the effective date of this Order, three hours of continuing pharmacy education (0.3 CEUs) on Aseptic Techniques and three hours of continuing pharmacy education (0.3 CEUs) on Medication Errors, which may not also be used for license renewal.

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.

Such an appeal, setting forth the order appealed from and the grounds of the appeal, must be commenced by filing 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: MAILED JUNE 9, 2005

By: _____
Timothy J. Benedict, R.Ph., Assistant Executive Director

CERTIFIED MAIL / Return Receipt

7003 0500 0002 4340 8398

TJB/lf

cc: Sally Ann Steuk, Assistant Attorney General

David W. Grauer, Attorney for Respondent; Squire, Sanders & Dempsey L.L.P.; 1300
Huntington Center; 41 South High Street; Columbus, Ohio 43215