



# OHIO STATE BOARD OF PHARMACY

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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-951103-025)

In The Matter Of:

**JOSEPH TODD FRAKER, R.Ph.**

2049 Scenic Drive, Apt. 5D

Lancaster, Ohio 43130

(R.Ph. No. 03-1-09289)

### INTRODUCTION

THE MATTER OF JOSEPH TODD FRAKER CAME ON FOR CONSIDERATION ON APRIL 25, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JOSEPH TODD FRAKER WAS NOT PRESENT, NOR WAS HE REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

### SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Franklin Z. Wickham, R.Ph., Ohio State Board of Pharmacy
- (2) William Padgett, Ohio State Board of Pharmacy
- (3) Timothy J. Benedict, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity for Hearing letter dated November 3, 1995.
- (2) Exhibit 1A--Amendment/Addendum Notice and Notice of Opportunity for Hearing letter dated January 22, 1996.

- (3) Exhibit 1B--Hearing Request letter dated February 16, 1996.
- (4) Exhibit 1C--Hearing Schedule letter dated February 23, 1996.
- (5) Exhibit 1D--Letter from Joseph T. Fraker dated March 18, 1996.
- (6) Exhibit 1E--Pharmacist File Front Sheet of Joseph Todd Fraker showing original date of registration as August 4, 1969; and Renewal Application for Pharmacist License, No. 03-1-09289, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, dated July 25, 1995.
- (7) Exhibit 1F--Order of the Ohio State Board of Pharmacy, Docket No. D-881005-013, of Joseph Todd Fraker, R.Ph. dated March 7, 1989.
- (8) Exhibit 2--Five-page copy of statement of Joseph Todd Fraker dated November 2, 1995, and attached copy of worksheet of Joseph Todd Fraker dated November 2, 1995.
- (9) Exhibit 3--Copy of urine drug screen report of Todd Fraker dated April 21, 1995.
- (10) Exhibit 6--Seventy-one still shot photos from video tape made at Revco, Terminal Distributor License No. 02-155750, dated from October 27, 1995, through November 1, 1995.
- (11) Exhibit 7--Ohio State Board of Pharmacy, Drug Audit Accountability Sheet of Revco, Terminal Distributor License No. 02-155750, for Hydromet dated October 27, 1995.
- (12) Exhibit 8--Ohio State Board of Pharmacy, Drug Audit Accountability Sheet of Revco, Terminal Distributor License No. 02-155750, for Codimal DH dated October 31, 1995.
- (13) Exhibit 9--Ohio State Board of Pharmacy, Drug Audit Accountability Sheet of Revco, Terminal Distributor License No. 02-155750, for Codiclear DH dated October 31, 1995.
- (14) Exhibit 10--Ohio State Board of Pharmacy, Drug Audit Accountability Sheet of Revco, Terminal Distributor License No. 02-155750, for Chemdal DH dated October 31, 1995.
- (15) Exhibit 11--Ohio State Board of Pharmacy, Drug Audit Accountability Sheet of Revco, Terminal Distributor License No. 02-155750, for Hycodan dated October 31, 1995.

Respondent's Exhibits:

- (1) None

#### FINDINGS OF FACT

After having heard the testimony, considered the evidence, observed the demeanor of the witnesses, and weighed their credibility, the State Board of Pharmacy finds the following to be fact:

- (1) On November 3, 1995, Joseph Todd Fraker was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing.
- (2) As demonstrated by return receipt of November 4, 1995, Joseph Todd Fraker received the letter of November 3, 1995, informing him of the allegations against him, and his rights.
- (3) Joseph Todd Fraker requested a hearing and a hearing was scheduled in accordance with Chapter 119. of the Ohio Revised Code. However, pursuant to correspondence from Joseph Todd Fraker dated March 18, 1996, Mr. Fraker withdrew his request for a hearing.

- (4) Records of the Board indicate that Joseph Todd Fraker was originally licensed to practice pharmacy in Ohio on August 4, 1969, and on November 3, 1995, Joseph Todd Fraker's license was summarily suspended in accordance with Divisions (A) and (B) of Section 3719.121 of the Ohio Revised Code.
- (5) Joseph Todd Fraker is addicted to or abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Joseph Todd Fraker's license to practice pharmacy was placed on probation in March of 1989 for theft of drugs and drug abuse; and, on November 2, 1995, Joseph Todd Fraker admitted to agents of the Ohio State Board of Pharmacy that he had "relapsed"; that he had contracted with a drug treatment facility and in May (*sic*) 1995 he tested positive for drugs of abuse when submitting to urinalysis; and, that each day Joseph Todd Fraker worked at Revco #499, from May 1995 through October 27, 1995, he stole Hydromet and/or Codimal syrups, schedule III controlled substances, for personal consumption while practicing pharmacy.
- (6) Joseph Todd Fraker did, on or about October 27, 1995, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Revco Drug #499, 620 Carroll Street, New Lexington, Ohio, beyond the express or implied consent of the owner, to wit: on this date Joseph Todd Fraker admittedly stole 240ml of Hydromet Syrup for his own personal abuse while practicing pharmacy. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (7) Joseph Todd Fraker did, from May 1, 1995, through October 31, 1995, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of another, beyond the express or implied consent of the owner, Revco #499, to wit: Joseph Todd Fraker stole the following schedule III controlled substances:

<u>Quantity</u>	<u>Drug</u>
11,890ml	Hydromet
340ml	Codimal DH
160ml	Codiclear DH
1060ml	Chemdal DH
1680ml	Hycodan

Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (8) Joseph Todd Fraker did, from May 1, 1995, through October 31, 1995, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of another, beyond the express or implied consent of the owner, Revco #499, to wit: Joseph Todd Fraker admittedly stole 24 units of Lasix 40mg, a dangerous drug, for the purpose of diluting the concentration of controlled substances in his body for drug screens. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (9) Joseph Todd Fraker did, from May 1, 1995, through October 27, 1995, with purpose to deprive, knowingly obtain or exert control over the property of another beyond the express or implied consent of the owner, Revco #499, to wit: Joseph Todd Fraker admittedly stole reading glasses, phone cards, and other

miscellaneous items while working as a pharmacist at Revco. Such conduct is in violation of Section 2913.02 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 (5) through (9) of the Findings of Fact constitute being guilty of 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 paragraphs (5) through (8) of the Findings of Fact constitute being addicted to or abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

#### ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued November 3, 1995.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Joseph Todd Fraker:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-1-09289, held by Joseph Todd Fraker 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 set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-1-09289, held by Joseph Todd Fraker effective as of the date of the mailing of this Order.

Division (B) of Section 4729.16 of the Ohio Revised Code provides: "Any individual whose identification card is revoked, suspended, or refused, shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of notice 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.