

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-001004-014)

In The Matter Of:

RICHARD A. PETRILLA, R.Ph.

440 Chatsworth Lane
Canfield, Ohio 44406
(R.Ph. No. 03-1-09313)

INTRODUCTION

THE MATTER OF RICHARD A. PETRILLA, R.Ph. CAME FOR HEARING ON MARCH 6, 2001 BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

RICHARD A. PETRILLA WAS REPRESENTED BY KEVIN L. SHOEMAKER AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) George Pavlich, Ohio State Board of Pharmacy
- (2) Joann Predina, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Richard A. Petrilla, R.Ph., Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1A--Copy of six-page Summary Suspension Order/Notice of Opportunity for Hearing letter dated October 4, 2000.
- (2) Exhibit 1B--Hearing Request letter dated October 13, 2000.
- (3) Exhibit 1C--Copy of Hearing Schedule letter dated October 17, 2000.
- (4) Exhibit 1D--Motion For Continuance and Memorandum In Support for Dick's Pharmacy and Motion For Continuance and Memorandum In Support for Richard A. Petrilla from Kevin L. Shoemaker dated December 26, 2000.

- (5) Exhibit 1E--Copy of Hearing Schedule letter dated December 22, 2000.
- (6) Exhibit 1F--Copy of Pharmacist File Front Sheet for Richard a. Petrilla showing original date of registration as August 4, 1969.
- (7) Exhibit 1G--Copy of two-page Dangerous Drug Distributor computer record for Dick's Pharmacy showing original date of registration as October 1, 1987.
- (8) Exhibit 2--Copy of seven-page "Plea of No Contest with Stipulation of Guilt", Case No. 00CR0760, State of Ohio vs. Richard A. Petrilla, in the Mahoning County Common Pleas Court dated August 17, 2000, with attached copy of "Judgment Entry", State of Ohio vs. Richard A. Petrilla, in the Mahoning County Common Pleas Court dated August 17, 2000.
- (9) Exhibit 4--Copy of six-page Dangerous Drug Distributor Inspection Report of Dick's Pharmacy dated November 25, 1997; and copy of response to the Inspection Report of November 25, 1997.
- (10) Exhibit 5--Copy of ten-page Dangerous Drug Distributor Inspection Report of Dick's Pharmacy dated February 23, 1999; copy of twelve pages from Richard A. Petrilla in response to the Inspection Report of February 23, 1999.
- (11) Exhibit 6--Copy of six-page Dangerous Drug Distributor Inspection Report of Dick's Pharmacy dated March 31, 1999.
- (12) Exhibit 7--Copy of UHC prescription record for Roberto Agosto dated from December 10, 1997 to March 21, 1998; copy of five-page Interview and Statement of Consuelo Mendel, M.D. dated December 6, 1999; copy of five-page Interview and Statement of Dr. Mounir El-Hayek, M.D. dated November 24, 1999; three pages of copies of prescriptions for Roberto Agosto dated from December 10, 1997 to March 31, 1998, copy of eight-page Dick's Pharmacy Patient Profile Printout of Roberto T. Agosto for January 1, 1995 to March 31, 1999.
- (13) Exhibit 8--Copy of seven-page UHC prescription record for Mattie Greer dated from February 13, 1997 to March 25, 1999; copy of ten-page Interview and Statement of James E. Toth, D.O. and Cheryl A. Streb-Baran dated May 8, 2000; thirty-seven pages of copies of prescriptions for Mattie Greer dated from February 13, 1997 to March 25, 1999; copy of nineteen-page Dick's Pharmacy Patient Profile Printout of Mattie Greer for January 1, 1998 to March 31, 1999.
- (14) Exhibit 9--Copy of two-page UHC prescription record for Doris Cowart dated from August 7, 1998 to February 11, 1999; copy of five-page Interview and Statement of Fred Pruitt, M.D. and Flora Pulliam dated May 24, 2000; six pages of copies of prescriptions for Doris Cowart dated from August 7, 1998 to February 11, 1999; copy of six-page Dick's Pharmacy Patient Profile Printout of Doris Cowart for March 1, 1998 to March 31, 1999.
- (15) Exhibit 10--Copy of two-page UHC prescription record for Thirty Price dated from October 9, 1997 to February 8, 1999; copy of ten-page Interview and Statement of T. K. Rawa, M.D. and Mary Steger, R.N. dated May 22, 2000; copy of seven-page Interview and Statement of Suman K. Mishr, M.D. dated May 23, 2000; eighteen pages of copies of prescriptions for Thirty Price dated from October 9, 1997 to February 8, 1999; copy of three-page Dick's Pharmacy Patient Profile Printout of Thirty Price for January 1, 1997 to February 23, 1999.

- (16) Exhibit 11--Copy of seven-page UHC prescription record for Reed Taylor dated from January 6, 1998 to January 25, 1999; copy of twelve-page Interview and Statement of Fred Pruitt, M.D. and Flora Pulliam dated May 24, 2000; twenty-five pages of copies of prescriptions for Reed Taylor dated from January 7, 1998 to February 8, 1999; copy of twenty-three-page Dick's Pharmacy Patient Profile Printout of Reed Taylor for January 1, 1998 to March 31, 1999.
- (17) Exhibit 12--Copy of nineteen pages of UHC prescription records with handwritten notes for Roberto Agosto, Doris Cowart, Thirty Price, Reed Taylor, and Mattie Greer.
- (18) Exhibit 13--Twenty-page copy of Transcript of Tape-recorded Interview of Richard Petrella(*sic*), R.Ph. on February 23, 1999.

Respondent's Exhibits:

- (1) Exhibit A--Copy of Prescription No. 289746 for Thirty B. Price by Suman K. Mishr, M.D. dated May 7, 1997.
- (2) Exhibit B--Letter from Richard M. Kalapos, D.O. dated February 20, 2001.
- (3) Exhibit C--Statement of Martha Lampley, Dora Hill, and Marilyn Brown dated March 1, 2001.
- (4) Exhibit D--Affidavit of Reed Taylor dated March 1, 2001.
- (5) Exhibit E--Affidavit of Thirty B. Price dated March 1, 2001.
- (6) Exhibit F--Statement of Doris Cowart, not dated.
- (7) Exhibit G--Statement of Mattie Greer, not dated.
- (8) Exhibit H--Copy of letter from Robert Duffrin dated March 6, 2001.

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 Richard A. Petrilla was originally licensed in the state of Ohio on August 4, 1969, pursuant to examination, and that Richard A. Petrilla's license to practice pharmacy was summarily suspended effective October 4, 2000. Records further indicate that Richard A. Petrilla is the Responsible Pharmacist at Dick's Pharmacy pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) Richard A. Petrilla did, on or about August 17, 2000, plead no contest with stipulation of guilt in the Common Pleas Court of Mahoning County, Ohio to, and was found guilty of, five counts of Illegal Processing of Drug Documents, felonies of the fifth degree, in violation of Section 2925.23(B) of the Ohio Revised Code, and five counts of Dangerous Drug Distribution, felonies of the fourth degree, in violation of Section 4729. 51(A) of the Ohio Revised Code. State of Ohio vs. Richard A. Petrilla, Case No. 00 CR 0760, Mahoning County Common Pleas Court. Such conduct constitutes being guilty of a felony or gross immorality within the meaning of Section 4729.16(A) of the Ohio Revised Code.

- (3) Richard A. Petrilla did, between November 29, 1997, through March 23, 1999, with purpose to deprive, knowingly obtain or exert control over the property of United Healthcare, to wit: Richard A. Petrilla submitted false prescriptions claims and was reimbursed by United Healthcare for the prescriptions Mr. Petrilla created. Five out of approximately 180 patients, randomly selected and listed below, show dollar amounts received by Richard A. Petrilla from United Healthcare for each specific patient:

Patient #1	\$958.70
Patient #2	\$15,599.71
Patient #3	\$769.53
Patient #4	\$2,295.42
<u>Patient #5</u>	<u>\$18,305.02</u>
Total	\$37,928.38

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

- (4) Richard A. Petrilla did, from on or about February 21, 1998, through March 21, 1998, intentionally make, utter, or sell false or forged prescriptions, to wit: Richard A. Petrilla created twelve prescriptions for Patient #1 and maintained them on file at Dick's Pharmacy so as to cover false insurance billings. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (5) Richard A. Petrilla did, from on or about February 21, 1998, through March 21, 1998, sell at retail a dangerous drug, when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on twelve occasions throughout this time period, Richard A. Petrilla sold dangerous drugs to Patient #1 without a valid prescription from a licensed health professional authorized to prescribe drugs and/or without a legitimate purpose. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.
- (6) Richard A. Petrilla did, from on or about April 27, 1998, through March 23, 1999, intentionally make, utter, or sell false or forged prescriptions, to wit: Richard A. Petrilla created 253 prescriptions for Patient #2 and maintained them on file at Dick's Pharmacy so as to cover false insurance billings. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (7) Richard A. Petrilla did, from on or about April 27, 1998, through March 23, 1999, sell at retail a dangerous drug, when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on 253 occasions throughout this time period, Richard A. Petrilla sold dangerous drugs to Patient #2 without a valid prescription from a licensed health professional authorized to prescribe drugs and/or without a legitimate purpose. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code

- (8) Richard A. Petrilla did, from on or about August 7, 1998, through February 11, 1999, intentionally make, utter, or sell false or forged prescriptions, to wit: Richard A. Petrilla created twelve prescriptions for Patient #3 and maintained them on file at Dick's Pharmacy so as to cover false insurance billings. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (9) Richard A. Petrilla did, from on or about August 7, 1998, through February 11, 1999, sell at retail a dangerous drug, when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on twelve occasions throughout this time period, Richard A. Petrilla sold dangerous drugs to Patient #3 without a valid prescription from a licensed health professional authorized to prescribe drugs and/or without a legitimate purpose. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.
- (10) Richard A. Petrilla did, from on or about November 29, 1997, through February 8, 1999, intentionally make, utter, or sell false or forged prescriptions, to wit: Richard A. Petrilla created 35 prescriptions for Patient #4 and maintained them on file at Dick's Pharmacy so as to cover false insurance billings. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (11) Richard A. Petrilla did, from on or about November 29 1997, through February 8, 1999, sell at retail a dangerous drug, when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on 35 occasions throughout this time period, Richard A. Petrilla sold dangerous drugs to Patient #4 without a valid prescription from a licensed health professional authorized to prescribe drugs and/or without a legitimate purpose. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.
- (12) Richard A. Petrilla did, from on or about January 6, 1998, through January 25, 1999, intentionally make, utter, or sell false or forged prescriptions, to wit: Richard A. Petrilla created 244 prescriptions for Patient #5 and maintained them on file at Dick's Pharmacy so as to cover false insurance billings. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (13) Richard A. Petrilla did, from on or about January 6, 1998, through January 25, 1999, sell at retail a dangerous drug, when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on 244 occasions throughout this time period, Richard A. Petrilla sold dangerous drugs to Patient #5 without a valid prescription from a licensed health professional authorized to prescribe drugs and/or without a legitimate purpose. Such conduct is in violation of Section 4729.51(C) 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 (2) through (13) of the Findings of Fact constitute being guilty of a felony as provided in Division (A)(1) 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 (2) through (13) 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.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (4) through (13) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapters 2925. and 4729. of the Revised Code as provided in Division (A)(5) 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 to Richard A. Petrilla on October 4, 2000.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Richard A. Petrilla:

- (A) On the basis of the Findings of Fact and paragraphs (1) and (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends for two years the pharmacist identification card, No. 03-1-09313, held by Richard A. Petrilla and such suspension is effective as of the date of the mailing of this Order.
 - (1) Richard A. Petrilla, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
 - (2) Richard A. Petrilla, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return the identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

Further, Richard A. Petrilla must take and successfully complete the Multistate Pharmacy Jurisprudence Examination, or an equivalent examination approved by the Board, prior to reinstatement. If Richard A. Petrilla has not successfully completed the examination prior to two years from the effective date of this Order, his license will remain suspended until this condition has been achieved.

- (B) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of forty-two thousand five hundred dollars (\$42,500.00) on Richard A. Petrilla effective as of the date of the mailing of this Order. The monetary penalty is due and owing within thirty days of the mailing of this Order. The remittance 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.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-8/Nay-0).

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE OCTOBER 4, 2000