



# OHIO STATE BOARD OF PHARMACY

- An Equal Opportunity Employer and Service Provider -

77 S. High Street, 17th Floor; Columbus, Ohio 43266-0320  
Telephone: 614/466-4143 FAX: 614/752-4836  
TTY/TDD Ohio Relay Service: 1-800/750-0750

---

ORDER OF THE STATE BOARD OF PHARMACY  
(Docket No. D-930511-088)

In The Matter Of:

JOSEPH FERGUSON, R.Ph.  
9369 Lansford Drive  
Cincinnati, Ohio 45242  
(R.Ph. No. 03-1-10868)

## INTRODUCTION

THE MATTER OF JOSEPH FERGUSON CAME TO HEARING ON SEPTEMBER 30, 1993, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH R. SABINO, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JOSEPH FERGUSON WAS REPRESENTED BY J. BOYD BINNING, AND THE STATE OF OHIO WAS REPRESENTED BY RONDA A. SHAMANSKY, ASSISTANT ATTORNEY GENERAL.

## SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Joseph Ferguson, Respondent
- (2) Michael Cluxton, Ohio State Board of Pharmacy
- (3) George Rudemiller, Cincinnati Police Department

Respondent's Witnesses:

- (1) Joseph Ferguson, Respondent
- (2) John Michael Jackson
- (3) Wayne Brown

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1 - Summary Suspension Order dated May 11, 1993.
- (2) Exhibit 2 - Four-page correspondence from J. Boyd Binning consisting of Notice of Request for Hearing and Certificate of Service, and Request for Stay Order and Certificate of Service dated May 13, 1993.
- (3) Exhibit 3 - Hearing Schedule letter dated May 18, 1993.

- (4) Exhibit 4 - Letter from John J. Arnold, Assistant Prosecuting Attorney of Hamilton County dated April 20, 1993; Certified Entry Withdrawing Plea of Not Guilty and Entering Plea of Guilty in the State of Ohio, Hamilton County, Court of Common Pleas, Case No. 928160, of Joseph Ferguson dated April 15, 1993; and three-page, five-count Indictment for Trafficking In Drugs in the State of Ohio, Hamilton County, Court of Common Pleas, Case No. B928160, of Joseph Ferguson, not dated.
- (5) Exhibit 5 - Prescription number R331952.
- (6) Exhibit 6 - Prescription number R315367.
- (7) Exhibit 7 - Prescription number R310553.
- (8) Exhibit 8 - Copy of thirty-one page report of Walgreen Company, Store No. 00275, Prescription Insurance Profile of Waite Loescher (sic Linda Waite Loescher) dated from January 1, 1991, through September 22, 1992.
- (9) Exhibit 9 - Copy of sixteen-page report of Brent's Pharmacies, Inc., Profile Print of Linda Loescher dated from August 16, 1991, through February 8, 1993.

Respondent's Exhibits:

- (1) Exhibit A - Two-page letter from Wayne C. Brown dated April 17, 1993; letter from Richard A. Kaiser dated September 22, 1993; letter from Thomas E. Ferguson dated August 3, 1993; letter from Reverend Robert W. Goebel, not dated; letter from Nina K. Nethercote dated August 1, 1993; and letter from Gary McDowell, not dated.
- (2) Exhibit B - Copy of letter from Joanne Arrico, not dated; letter from Tom and Bobbie Platz dated July 31, 1993; and letter from Mrs. Pearl Finley dated May 16, 1993.
- (3) Exhibit C - Letter from John Michael Jackson, not dated; letter from Jack P. Horn, not dated; letter from Robert M. Parker dated May 3, 1993; copy of letter from Joanne Arrico dated July 30, 1993; letter from Charles Snow, not dated; letter from Jerome W. Kiser dated April 14, 1993; letter from Richard Blomer dated April 13, 1993; letter from Kim Massie dated July 6, 1993; and letter from Robert L. Westbrook dated August 12, 1993.
- (4) Exhibit D - Prescription for Linda Loescher dated June 7th.

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) Joseph Ferguson was registered to practice pharmacy in the state of Ohio by examination in June of 1974.
- (2) Joseph Ferguson did, on or about April 15, 1993, in the Hamilton County Court of Common Pleas, plea guilty to three counts of Trafficking in Drugs, in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
- (3) Joseph Ferguson's license to practice pharmacy in Ohio was summarily suspended pursuant to the provisions of Section 3719.121 of the Ohio Revised Code by the Board of Pharmacy on May 11, 1993.

- (4) Joseph Ferguson did, on or about January 15, 1992, March 9, 1992, and August 19, 1992, intentionally make and/or knowingly possess false or forged prescriptions, to wit: Joseph Ferguson created and/or knowingly possessed prescriptions numbered R310553, R315367, and R331952 for Acetaminophen with Codeine #4, a schedule III controlled substance. Such conduct is in violation of Section 2925.23 of the Ohio Revised Code.
- (5) Joseph Ferguson as responsible pharmacist did, on or about January 15, 1992, March 9, 1992, and August 19, 1992, sell, offer for sale, or deliver at retail to the consumer without a prescription from the physician a drug which can be sold only pursuant to prescription, to wit: Joseph Ferguson and/or a pharmacist under his control refilled prescriptions numbered R310553, R315367, and R331952 for Acetaminophen with Codeine #4, a schedule III controlled substance, without the express authorization by the physician since such prescriptions were false or forged. Such conduct is not in accordance with Section 3715.52(L) of the Ohio Revised Code and Rule 4729-5-30(G) of the Ohio Administrative Code.

#### CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes 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 (5) 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 (2), (4), and (5) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Sections 3715.52 through 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.

#### 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 imposed on May 11, 1993.

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

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the identification card, No. 03-1-10868, held by Joseph Ferguson indefinitely, effective as of the date of the mailing of this Order.

(B) The Board will reinstate Joseph Ferguson's license to practice pharmacy in Ohio after May 1, 1994, and place him on probation for five years from the reinstatement date, provided that:

(1) Joseph Ferguson takes and successfully completes the Federal Drug Law Examination and Jurisprudence examination offered by the Board prior to reinstatement of his license.

(C) Further, upon reinstatement, the terms of Joseph Ferguson's probation are as follows:

(1) Joseph Ferguson must not violate the drug laws of the state of Ohio, any other state, or the federal government;

(2) Joseph Ferguson must abide by the rules of the State Board of Pharmacy;

(3) Joseph Ferguson must comply with the terms of this Order; and

(4) The Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board shall revoke probation for a violation occurring during the probation period.

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

The Board further stipulates that Joseph Ferguson may not serve as a responsible pharmacist during the five-year probation period.

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part that: "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 (Aye-7/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.

JOSEPH FERGUSON, R.Ph.  
Page Five  
Order of the Board

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

ORDER MAILED  
AND EFFECTIVE: NOVEMBER 1, 1993

CERTIFIED MAIL  
Return Receipt  
#P 373 708 415

FRANKLIN Z. WICKHAM, EXECUTIVE DIRECTOR

FZW/so

By   
William T. Winsley, R.Ph., M.S.  
Assistant Executive Director

cc: Gregg Thornton, Assistant Attorney General  
J. Boyd Binning, Attorney at Law; 592 S. 3rd Street; Columbus, Ohio  
43215-5771