



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-991005-024)

In The Matter Of:

THOMAS WILLIAM FOTI, R.Ph.

995 Clearview Drive SE

New Philadelphia, Ohio 44663

(R.Ph. No. 03-1-10877)

INTRODUCTION

THE MATTER OF THOMAS WILLIAM FOTI CAME TO HEARING ON JUNE 14, 2000, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

THOMAS WILLIAM FOTI WAS REPRESENTED BY DAVID W. GRAUER, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) David Gallagher, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Thomas William Foti, Respondent
- (2) Chris Hart, R.Ph., Rite Aid

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of four-page Summary Suspension Order/Notice of Opportunity for Hearing letter dated October 5, 1999.
- (2) Exhibit 1A--Request for Hearing and Certificate of Service dated October 29, 1999; and Notice of Appearance and Certificate of Service dated October 29, 1999.

- (3) Exhibit 1B--Copy of Hearing Schedule letter dated November 2, 1999.
- (4) Exhibit 1C--Two-page letter from David W. Grauer dated November 4, 1999, with attached four-page proposed settlement in the matter of Thomas William Foti.
- (5) Exhibit 1D--Copy of letter from David L. Rowland dated November 8, 1999.
- (6) Exhibit 1E--Copy of Hearing Schedule letter dated March 1, 2000.
- (7) Exhibit 1F--Copy of Pharmacist File Front Sheet of Thomas William Foti showing original date of registration as July 30, 1974; and copy of Renewal Application for Pharmacist License No. 03-1-10877 for a license to practice pharmacy in Ohio from September 15, 1999, to September 15, 2000, of Thomas William Foti dated July 21, 1999.
- (8) Exhibit 2--Two-page copy of D.E.A. Form 106 (Report of Theft or Loss of Controlled Substances) of Rite Aid Discount Pharmacy #2392 dated August 6, 1999.
- (9) Exhibit 3--Three-page Ohio State Board of Pharmacy Statement Form of Steven J. Gooding, Case No. 99-1692, signed and notarized on July 26, 1999.
- (10) Exhibit 4--Two-page Ohio State Board of Pharmacy Statement Form of Tim Rech, Case No. 99-1692, signed and notarized on July 26, 1999.
- (11) Exhibit 5--Copy of thirteen-page transcript of telephone conversation between Dave Gallagher and Tom Foti held on July 5, 1999.
- (12) Exhibit 6--Copy of four-page "Indictment" in the Tuscarawas County Common Pleas Court, The State of Ohio vs. Thomas W. Foti, Case No. 2000 CR 02 0029, dated February 25, 2000.
- (13) Exhibit 7--Copy of five-page "Judgment Entry" in the Tuscarawas County Common Pleas Court, State of Ohio vs. Thomas W. Foti, Case No. 2000 CR 02 0029, dated March 9, 2000.
- (14) Exhibit 8--Copy of seven-page "Judgment Entry" in the Tuscarawas County Common Pleas Court, State of Ohio vs. Thomas W. Foti, Case No. 2000 CR 02 0029, dated May 2, 2000.

Respondent's Exhibits:

- (1) Exhibit A--Copy of two-page Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of Tom Foti dated September 12, 1999.
- (2) Exhibit B--Copies of seven-page "Judgment Entry" in the Tuscarawas County Common Pleas Court, State of Ohio vs. Thomas W. Foti, Case No. 2000 CR 02 0029, dated May 2, 2000; "Motion for Treatment In Lieu of Conviction" dated March 7, 2000; two-page "Memorandum" dated March 7, 2000; two-page "Memorandum In Support of Motion For Treatment In Lieu of Conviction" dated April 5, 2000; "Proof of Service" dated April 4, 2000; and two-page copy of Ohio Adult Parole Authority "Conditions of Supervision" of Thomas Foti dated April 27, 2000.
- (3) Exhibit C--Copy of customer receipt for Bank One Check No. 626612627; two-page copy of "Letter of Civil Demand" to Thomas Foti from W. M. Knievel dated July 8, 1999; and copy of Domestic

- Return Receipt showing date of delivery as July 15, 1999, and Receipt for Certified Mail No. Z 321 978 465 dated July 13, 1999.
- (4) Exhibit D--Copy of seven pages of AA Meeting Reporting Sheets of Tom Foti dated from October 1, 1999, through June 5, 2000.
 - (5) Exhibit E--Copy of letter from Chris Lindskog dated March 1, 2000; copy of letter from Wyckliffe J. Howland dated April 17, 2000; copy of letter from Maureen McGuire dated February 25, 2000; and copy of letter from Kellie Fisher dated February 23, 2000.
 - (6) Exhibit F--Copy of two-page Shepherd Hill "Recovery Monitoring Services Agreement" of Thomas W. Foti dated October 6, 1999.
 - (7) Exhibit G--Copy of RMS Urine Monitoring of Thomas Foti dated from October 13, 1999, through March 30, 2000, and twenty-nine pages consisting of twenty-five urine drug screen reports of Thomas Foti collected from October 13, 1999, through May 12, 2000.

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 Thomas William Foti was originally licensed in the State of Ohio on July 30, 1974, pursuant to examination and his license to practice pharmacy in the state of Ohio was summarily suspended on October 5, 1999, pursuant to Section 3719.121(B) of the Ohio Revised Code.
- (2) Thomas William Foti did, from on or about May 1, 1998, through July 1, 1999, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Rite Aid Pharmacy #2392, beyond the express or implied consent of the owner and/or by deception, to wit: Thomas William Foti stole the following controlled substances from his employer:

<u>Drug</u>	<u>Quantity</u>
Adipex-P	33
Fastin 30mg	25
Phentermine 37.5mg	38
Vicodin 5mg/500mg	22
Hydrocodone 5mg/APAP 500mg	475
Tylenol 325mg/Codeine 30mg	220
Lorazepam 1mg	14
Diazepam 2mg	63
Diazepam 5mg	162
Valium 5mg	17

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

- (3) Thomas William Foti did, from about April of 1999, to July of 1999, knowingly possess controlled substances when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Thomas William Foti admitted consuming eight Tylenol 325mg w/Codeine 30mg daily for a three- to four-week period and due to becoming tired from taking pain medications, Thomas William Foti would take stimulants to get through the day. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (4) Thomas William Foti is addicted to and/or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Thomas William Foti has admitted stealing Phentermine, Hydrocodone, and Tylenol/Codeine from his employer; Thomas William Foti admitted consuming eight Tylenol 325mg w/Codeine 30mg daily for a three- to four-week period; and, due to becoming tired from taking pain medications, Thomas William Foti admitted to taking stimulants to get through the day. Such conduct indicates that Thomas William Foti falls within the ambit of Sections 3719.121(B), and 4729.16(A)(3) 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) and (3) 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 (4) 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 (3) and (4) of the Findings of Fact constitute being addicted to or abusing liquor or 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.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (3) 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 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.

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 Thomas William Foti on October 5, 1999.

Pursuant to Section 4729.16 of the Ohio Revised Code, and on the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby approves reinstatement of the pharmacist identification card, No. 03-1-10877, held by Thomas William Foti to practice pharmacy in the state of Ohio and places him on probation for five years from the date the identification card is issued, with the following conditions:

- (A) Thomas William Foti must enter into a contract, signed within 90 days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and submit a copy of the signed contract to the Board office with the renewal application. The contract must provide that:
- (1) Random, observed urine drug screens shall be conducted at least once every three months.
 - (a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.
 - (b) Alcohol must be added to the standard urine drug screen. A Breathalyzer may be used to test for alcohol, but an appropriately certified individual must conduct the test within twelve hours of notification.
 - (c) Results of all drug and alcohol screens must be negative. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract and probation.
 - (2) The intervener/sponsor shall provide copies of all drug and alcohol screen reports to the Board in a timely fashion.
 - (3) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - (4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.

(B) Thomas William Foti must submit quarterly progress reports to the Board, due January 10, April 10, July 10, and October 10 of each year of probation, that include:

- (1) The written report and documentation provided by the treatment program pursuant to the contract, and
- (2) A written description of Thomas William Foti's progress towards recovery and what he has been doing during the previous three months.

(C) Other terms of probation are as follows:

- (1) The State Board of Pharmacy hereby declares that Thomas William Foti's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.
- (2) Thomas William Foti may not serve as a responsible pharmacist.
- (3) Thomas William Foti may not destroy, assist in, or witness the destruction of controlled substances.
- (4) Thomas William Foti must abide by the contract from the treatment provider and any violation must be reported to the Board immediately.
- (5) Thomas William Foti must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (6) Thomas William Foti must abide by the rules of the Ohio State Board of Pharmacy.
- (7) Thomas William Foti must comply with the terms of this Order.

Thomas William Foti is hereby advised that 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 may revoke probation for a violation occurring during the probation period.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.

