



OHIO STATE BOARD OF PHARMACY

65 S. Front Street, Room 504
Columbus, Ohio 43266-0320
Telephone: 614/466-4143

THE STATE BOARD OF PHARMACY
(Docket No. D-870828-007)

In The Matter Of:

MARK JUNIOR RETZ, R.Ph.
9645 Boyer Road
Versailles, Ohio 45380

INTRODUCTION

THE MATTER OF MARK JUNIOR RETZ CAME TO HEARING ON DECEMBER 3, 1987 BEFORE THE FOLLOWING MEMBERS OF THE BOARD: NORMAN LEIBOW, R.Ph. (presiding); GERALD CLOUSE, R.Ph.; TIMOTHY MOORE, R.Ph.; BETTY NICHOL, R.Ph.; JOSEPH SABINO, R.Ph.; JEROME WIESENHAHN, R.Ph.; AND MELVIN WILCZYNSKI, R.Ph.

MARK JUNIOR RETZ WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY CHRISTOPHER CULLEY, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Exhibits

- (1) Exhibit #A1 - Notice of Opportunity dated August 28, 1987 in the matter of Mark Junior Retz, R.Ph.
- (2) Exhibit #A2 - Notice of Opportunity dated August 28, 1987 in the matter of Family Drug Store.
- (3) Exhibit #B - Request for hearing dated September 28, 1987.
- (4) Exhibit #C - Hearing schedule letter dated October 6, 1987.
- (5) Exhibit #1 - Application for registration as a distributor of dangerous drugs showing Mark Retz as president of Family Drug Store.
- (6) Exhibit #2 - Application for annual license renewal as a pharmacist showing Mark Retz is a pharmacist in the state of Ohio.
- (7) Exhibit #3 - Accountability statement showing 2,840 shortage Percodan.
- (8) Exhibit #4 - Accountability statement showing 601 shortage Ritalin-10mg.
- (9) Exhibit #5 - Accountability statement showing 498 shortage Ritalin-20mg.
- (10) Exhibit #6 - Accountability statement showing 215 shortage Tylox.
- (11) Exhibit #7 - Accountability statement showing 90 shortage Preludin-75mg.

MARK JUNIOR RETZ, R.Ph.

Page Two

Order of the Board

- (12) Exhibit #8 - Accountability statement showing 381 shortage Percocet-5.
- (13) Exhibit #9 - Accountability statement showing 320 shortage M.S. Contin-30mg.
- (14) Exhibit #10 - Accountability statement showing 80 shortage Codeine Sulfate-30mg.
- (15) Exhibit #11 - Accountability statement showing 164 shortage Ritalin-5mg.
- (16) Exhibit #12 - Accountability statement showing 522 shortage Centrax-10mg.
- (17) Exhibit #13 - Accountability statement showing 9,126 shortage Tylenol #3.
- (18) Exhibit #14 - Accountability statement showing 2,056 shortage Hydrocodone w/APAP.
- (19) Exhibit #15 - Accountability statement showing 5,532 shortage Darvocet-N100.
- (20) Exhibit #16 - Accountability statement showing 2,930 shortage Darvon-N100.
- (21) Exhibit #17 - Accountability statement showing 6,517 shortage Meproamate-400mg.
- (22) Exhibit #18 - Accountability statement showing 225 shortage Tylenol #4 w/Codeine.
- (23) Exhibit #19 - Accountability statement showing 1,040 shortage Meproamate-200mg.
- (24) Exhibit #20 - Accountability statement showing 316 4oz.-bottles shortage Terpin Hydrate w/Codeine elixir.
- (25) Exhibit #21 - Exempt narcotic sales register.
- (26) Exhibit #22 - Statement dated August 4, 1987 from Dr. Leroy Steinbrecher, M.D.
- (27) Exhibit #22A - Computer printout for Rx#234008.
- (28) Exhibit #23 - Statement dated August 12, 1987 from Dr. Charles W. Platt, M.D.
- (29) Exhibit #23A - Computer printout for Rx#232507.
- (30) Exhibit #24 - Computer printout for Rx#233474.
- (31) Exhibit #25 - Computer printout for Rx#234792.
- (32) Exhibit #26 - Statement dated August 4, 1987 from Dr. Keith Ashbaugh, M.D.
- (33) Exhibit #26A- Computer printout for Rx#232971 and Rx#234008.
- (34) Exhibit #27 - Computer printout for Rx#235027.
- (35) Exhibit #28 - Computer printout for Rx#231851.
- (36) Exhibit #29 - D.E.A. 222 form showing sale of 2 X 20ml Demerol 100mg/cc to Dr. Gregory Weber, M.D., Ansonia Medical Center, Invoice #10449 showing sale of 3 Demerol to Ansonia Medical Center, Invoice #8114 showing sale of Morphine injectable, Dilaudid injectable, and Codeine injectable to Dr. Platt's Office.
- (37) Exhibit #29A - Statement dated August 4, 1987 from Dr. Gregory Weber, M.D.
- (38) Exhibit #30 - Application for annual license renewal as a pharmacist received February 6, 1987.
- (39) Exhibit #31 - Application for annual license renewal as a pharmacist received May 3, 1983.

- (40) Exhibit #32 - Statement dated January 14, 1987 from Mark Retz, R.Ph.
- (41) Exhibit #33 - Continuing Pharmacy Education Report Form received February 6, 1987.
- (42) Exhibit #34 - Statement dated February 27, 1987 from Mark J. Retz, R.Ph.
- (43) Exhibit #35 - Statement dated January 9, 1987 from R.Ph. Mark Retz.
- (44) Exhibit #36A-36M - Pictures showing pharmacy.
- (45) Exhibit #37 - Statement dated December 2, 1987 from Beverly May Davidson.
- (46) Exhibit #38 - Statement dated December 2, 1987 from Tom Broyles.
- (47) Exhibit #39 - Statement dated December 2, 1987 from Merlin Collins.
- () Exhibit #40 - Accountability statement showing 140 shortage Vicodin.

Respondent's Exhibits

(None)

FINDINGS OF FACT

- (1) From the evidence presented, the State Board of Pharmacy finds that the records of the State Board of Pharmacy indicate that Mark Junior Retz is the president of HRS, Inc., an Ohio corporation doing business as Family Drug Store, 102 W. Main Street, Versailles, Ohio 45380, Terminal Distributor of Dangerous Drugs License No. 02-143450; that Mark Junior Retz was registered as Ohio Pharmacist No. 03-3-08558, and that Mark Junior Retz is currently registered as Ohio Pharmacist No. 03-1-12485; and, that Mark Junior Retz was the responsible pharmacist required by Section 4729.55 of the Revised Code for Family Drug Store, 102 W. Main Street, Versailles, Ohio 45380, Terminal Distributor of Dangerous Drugs License No. 02-143450, between the dates of November 15, 1977 and January 8, 1987.
- (2) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz or another pharmacist under his control and supervision did, between the dates of May 8, 1986 through January 7, 1987, without a written or oral prescription given by a practitioner, dispense a quantity of approximately 2,840 tablets of Percodan, approximately 601 tablets of Ritalin-10mg, approximately 498 tablets of Ritalin-20mg, approximately 215 capsules of Tylox, approximately 90 tablets of Preludin Endurets, approximately 381 tablets of Percocet, and approximately 320 tablets of M.S. Contin, all of which are Schedule II controlled substances and dangerous drugs which may be dispensed only upon the prescription of a practitioner, in amounts equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code. Such conduct is not in accordance with Revised Code Chapters 3715., 3719., and 4729., and is prohibited by Sections 2925.03(A)(7), 3715.52(L), and 3719.05(A) of the Revised Code.

- (3) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz or another pharmacist under his control and supervision did, between the dates of May 8, 1986 through January 7, 1987, without a written or oral prescription given by a practitioner, dispense a quantity of approximately 80 tablets of Codeine Sulfate-30mg, a Schedule II controlled substance and dangerous drug which may be dispensed only upon the prescription of a practitioner, in an amount equal to or exceeding the bulk amount but in an amount less than three times that amount as defined in Section 2925.01 of the Revised Code. Such conduct is not in accordance with Revised Code Chapters 3715., 3719., and 4729., and is prohibited by Sections 2925.03(A)(5), 3715.52(L), and 3719.05(A) of the Revised Code.
- (4) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz or another pharmacist under his control and supervision did, between the dates of May 8, 1986 through January 7, 1987, without a written or oral prescription given by a practitioner, dispense a quantity of approximately 164 tablets of Ritalin-5mg, a Schedule II controlled substance and dangerous drug which may be dispensed only upon the prescription of a practitioner, in an amount less than the minimum bulk amount as defined in Section 2925.01 of the Revised Code. Such conduct is not in accordance with Revised Code Chapters 3715., 3719., and 4729., and is prohibited by Sections 2925.03(A)(1), 3715.52(L), and 3719.05(A) of the Revised Code.
- (5) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz or another pharmacist under his control and supervision did, between the dates of May 8, 1986 through January 7, 1987, without a written or oral prescription given by a practitioner, dispense a quantity of approximately 9,126 tablets of Acetaminophen with Codeine-30mg and approximately 2,056 tablets of Hydrocodone with APAP, both of which are Schedule III controlled substances and dangerous drugs which may be dispensed only upon the prescription of a practitioner, in amounts exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code. Such conduct is not in accordance with Revised Code Chapters 3715., 3719., and 4729., and is prohibited by Sections 2925.03(A)(5), 3715.52(L), and 3719.05(A) of the Revised Code.
- (6) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz or another pharmacist under his control and supervision did, between the dates of May 8, 1986 through January 7, 1987, without a written or oral prescription given by a practitioner, dispense a quantity of approximately 5,532 tablets of Darvocet-N100, approximately 2,930 tablets of Darvon-N100, and approximately 6,517 tablets of Meprobamate-400mg, all of which are Schedule IV controlled substances and dangerous drugs which may be dispensed only upon the prescription of a practitioner, in amounts equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code. Such conduct is not in accordance with Revised Code Chapters 3715., 3719., and 4729., and is prohibited by Sections 2925.03(A)(7), 3715.52(L), and 3719.05(A) of the Revised Code.

- (7) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz or another pharmacist under his control and supervision did, between the dates of May 8, 1986 through January 7, 1987, without a written or oral prescription given by a practitioner, dispense a quantity of approximately 225 tablets of Tylenol #4, a Schedule III controlled substance and dangerous drug which may be dispensed only upon the prescription of a practitioner, in an amount equal to or exceeding the bulk amount but in an amount less than three times that amount as defined in Section 2925.01 of the Revised Code. Such conduct is not in accordance with Revised Code Chapters 3715., 3719., and 4729., and is prohibited by Sections 2925.03(A)(5), 3715.52(L), and 3719.05(A) of the Revised Code.
- (8) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz or another pharmacist under his control and supervision did, between the dates of May 8, 1986 through January 7, 1987, without a written or oral prescription given by a practitioner, dispense a quantity of approximately 1,040 tablets of Meprobamate-200mg, a Schedule IV controlled substance and dangerous drug which may be dispensed only upon the prescription of a practitioner, in an amount equal to or exceeding the bulk amount but in an amount less than three times that amount as defined in Section 2925.01 of the Revised Code. Such conduct is not in accordance with Revised Code Chapters 3715., 3719., and 4729., and is prohibited by Sections 2925.03(A)(5), 3715.52(L), and 3719.05(A) of the Revised Code.
- (9) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz or another pharmacist under his control and supervision knowingly sold, between the dates of May 8, 1986 through January 7, 1987, approximately 37,920ml of Elixir of Terpin Hydrate with Codeine, a Schedule V controlled substance, in an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code, in violation of Section 2925.03(A)(7) of the Revised Code. Further, Mark Junior Retz did not have customers who purchased these exempt narcotics sign the exempt narcotics register. Such conduct violates Revised Code Section 3719.07(G) and Title 21 CFR 1306.32.
- (10) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz did, on one or more occasions, between the dates of June 1, 1986 and September 15, 1986, at Family Drug Store, 102 W. Main Street, Versailles, Ohio 45380, without a valid prescription dispense the following controlled substances as follows:

<u>Rx No.</u>	<u>Date Filled</u>	<u>Drug</u>	<u>Quantity Dispensed</u>
234008	07/31/86	Darvocet-N 100	45
234008	08/11/86	Darvocet-N 100	45
234008	08/17/86	Darvocet-N 100	45
234008	08/22/86	Darvocet-N 100	45

<u>Rx No.</u>	<u>Date Filled</u>	<u>Drug</u>	<u>Quantity Dispensed</u>
232507	06/15/86	Darvon-N 100	60
232507	06/19/86	Darvon-N 100	60
232507	06/25/86	Darvon-N 100	60
232507	07/05/86	Darvon-N 100	60
233474	07/27/86	Darvon-N 100	60
234792	08/24/86	Darvon-N 100	60
234792	08/28/86	Darvon-N 100	60
234792	09/03/86	Darvon-N 100	20
234792	10/15/86	Darvon-N 100	20
232971	07/09/86	Tylenol # 3	100
232971	07/21/86	Tylenol # 3	50
232971	07/31/86	Tylenol # 3	50
231851	05/26/86	Tylenol # 3	50
231851	06/01/86	Tylenol # 3	50
231851	06/09/86	Tylenol # 3	50

Such conduct was not in accordance with Revised Code Chapters 2715., 3719., and 4729., and is prohibited by Section 2925.03 of the Revised Code.

- (11) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz, as the responsible pharmacist required by Section 4729.55 of the Revised Code, and president of the corporation which owns Family Drug Store, 102 W. Main Street, Versailles, Ohio 45380, did not keep a record of all controlled substances received or dispensed, in violation of the provisions of Sections 3719.07 and 4729.37 of the Revised Code.
- (12) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz, as the responsible pharmacist required by Section 4729.55 of the Revised Code, and president of the corporation which owns Family Drug Store, 102 W. Main Street, Versailles, Ohio 45380, did violate Ohio Revised Code Section 3719.04(B) and Title 21 Section 1305 of the Code of Federal Regulations, to wit: Mark Junior Retz did sell the following Schedule II controlled substances at wholesale without being registered with the Ohio Board of Pharmacy as a wholesaler of controlled substances and without using the official written order forms in the manner prescribed by the federal drug abuse control laws:

Demerol-100mg/cc
Morphine Inj
Dilaudid Inj
Codeine Inj

Such conduct is not in accordance with Revised Code Chapter 3719., and is prohibited by Sections 2925.03 and 4729.51 of the Revised Code.

- (13) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz failed to renew his identification card on the fifteenth day of September, 1986 as required by Section 4729.12 of the Ohio Revised Code, for 1987, when he did not renew until February 6, 1987.
- (14) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz failed to renew his identification card on the fifteenth day of September, 1980 as required by Section 4729.12 of the Ohio Revised Code, for 1981, 1982, and 1983, when he did not renew until May 3, 1983.
- (15) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz did dispense and sell dangerous drugs while not being a registered pharmacist during the lapsed dates of his pharmacist license, in violation of the provisions of Section 4729.28 of the Revised Code.
- (16) From the evidence presented, the State Board of Pharmacy finds that Mark Junior Retz did not continue his pharmacy education in accordance with Section 4729.12 of the Revised Code and Rules 4729-7-01 to 4729-7-07 of the Administrative Code, to wit: on or about February 6, 1987, Mark Junior Retz submitted a Continuing Pharmacy Education Report Form indicating that he had obtained four and one-half CEUs of continuing pharmacy education as required by these rules in order to renew his license to practice pharmacy. A subsequent audit, pursuant to paragraph (C) of Ohio Administrative Code Rule 4729-7-03, however, revealed that Mr. Retz could not document the fact that he had successfully participated in 4.5 CEUs during the three-year period preceding renewal.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (2) through (12) of the Findings Of Fact constitutes gross immorality.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (2) through (12), (15), and (16) of the Findings Of Fact constitutes dishonesty and unprofessional conduct in the practice of pharmacy.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (2) through (16) of the Findings Of Fact constitutes willful violations of the provisions of Chapters 2925., 3715., 3719., and 4729. of the Ohio Revised Code.

ORDER

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions concerning the pharmacist license, No. 03-1-12485, held by Mark Junior Retz:

(A) On the basis of paragraph (1) through (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card held by Mark Junior Retz for three years.

(B) Further, the Board stipulates that Mark Junior Retz must successfully complete a Jurisprudence examination offered by the Board prior to completion of the three-year suspension.

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part that: "Any individual whose identification card is . . . , suspended, . . . , 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.

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 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

CERTIFIED MAIL
Return Receipt

ORDER ISSUED: January 29, 1988

FZW/sb

By Franklin Z. Wickham
Franklin Z. Wickham, Executive Director

cc: Christopher Culley, Assistant Attorney General