



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-060724-002)

In The Matter Of:

MICHAEL J. ESBER, R.Ph.

Marion Correctional Institution

Inmate #A520860

940 Marion-Williamsport Road

Marion, Ohio 43302

(R.Ph. No. 03-1-13497)

INTRODUCTION

THE MATTER OF MICHAEL J. ESBER CAME FOR HEARING ON MARCH 7, 2007, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JAMES E. TURNER, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; HEATHER L. PASQUALE, R.Ph.; AND DOROTHY S. TEATER, PUBLIC MEMBER.

MICHAEL J. ESBER WAS NOT PRESENT BUT WAS REPRESENTED BY JOHN P. ALEXANDER, JR. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witness

1. David Gallagher, Ohio State Board of Pharmacy

Respondent's Witnesses

None

State's Exhibits

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [07-24-06]
 - 1A-1B. Procedurals
 - 1C. Addendum Notice [08-22-06]
 - 1D-1G. Procedurals
 - 1H. Addendum Notice [01-11-07]
 - 1I. Procedural
2. State Board of Pharmacy Order in re Michael J. Esber, R.Ph. [07-16-01]
3. State Board of Pharmacy Order in re Michael J. Esber, R.Ph. [03-11-04]
4. Letter of Explanation of Michael J. Esber [07-17-06]
5. Rite Aid 2103 E Tuscarawas Customer History Report for Carl Esber [01-01-03 to 07-25-06]
6. Rite Aid 2103 E Tuscarawas Customer History Report (Sealed Record) [01-01-03 to 07-25-06]
7. Rite Aid 2103 E Tuscarawas Customer History Report for Michael J. Esber [01-01-03 to 07-25-06]

8. Rx #0379159 [01-27-06]
9. Rx #0384407 [03-23-06]
10. Rx #0385633 [04-06-06]
11. Rx #0387596 [04-27-06]
12. Rite Aid Pharmacy Prescription Register [12-10-05 to 12-10-05]
13. Rite Aid Pharmacy Prescription Register [01-27-06 to 01-27-06]
14. Rite Aid Pharmacy Prescription Register [03-23-06 to 03-23-06]
15. Rite Aid Pharmacy Prescription Register [04-06-06 to 04-06-06]
16. Rite Aid Pharmacy Prescription Register [04-08-06 to 04-08-06]
17. Rite Aid Pharmacy Prescription Register [04-20-06 to 04-20-06]
18. Rite Aid Pharmacy Prescription Register [04-27-06 to 04-27-06]
19. Letter of Statement of Jack Blaker [07-18-06]
20. Rite Aid 2103 E Tuscarawas Customer History Report (Sealed Record) [01-01-03 to 07-25-06]
21. Rite Aid Computer Generated Insurance billing for Rx # 02387 0375019 [12-10-05]
22. Rite Aid Computer Generated Insurance billing for Rx # 02387 0379159 [01-27-06]
23. Rite Aid Computer Generated Insurance billing for Rx # 02387 0385825 [04-08-06]
24. Rite Aid Computer Generated Insurance billing for Rx # 02387 0386963 [04-20-06]
25. Rite Aid Computer Generated Insurance billing for Rx # 02387 0384407 [03-23-06]
26. Rite Aid Computer Generated Insurance billing for Rx # 02387 0385633 [04-06-06]
27. Rite Aid Computer Generated Insurance billing for Rx # 02387 0387596 [04-27-06]
28. Notarized Statement of Ignatius Russo, DDS [07-27-06]
29. Notarized Statement of Joe L. Carpenter, DMD [07-28-06]
30. Grand Jury Witness Subpoena Issued to Center for Oral & Maxillofacial Surgery [08-09-06]
31. Notarized Statement of David Mallamaci, M.D. [07-31-06]
32. Notarized Statement of Jose Casanova, M.D. [08-07-06]
33. Drug Audit Accountability Statement for hydrocodone/APAP 7.5/750 mg at Rite Aid Pharmacy #2387 [05-01-05 to 07-17-06]
34. Journal Entry Sentencing Form, State of Ohio vs. Michael J. Esber, Case No. 2006CR1481, Stark County Common Pleas Court [12-20-06]; Prison Sentence Imposed [12-20-06]

Respondent's Exhibits

- A. Letter from Michael J. Esber [not dated]
- B-R. Seventeen letters of character reference [10-08-06 to 11-17-06]

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Michael J. Esber was originally licensed by the State of Ohio as a pharmacist on February 26, 1980, pursuant to examination and that his license was summarily suspended on July 24, 2006. Records further reflect during the relevant time periods stated herein, Michael J. Esber was the Responsible Pharmacist at Rite Aid Discount Pharmacy #2387, 2103 East Tuscarawas Avenue, Canton, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code. Further, Michael J. Esber was previously disciplined by the Board on July 16, 2001, and again on March 11, 2004.

- (2) Michael J. Esber did, from May, 2005, through July 15, 2006, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Rite Aid Discount Pharmacy #2387, beyond the express or implied consent of the owner, to wit: Michael J. Esber admittedly stole approximately 320 tablets of hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance, each month for the purpose of trafficking the drugs. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (3) Michael J. Esber did, from May, 2005, through July 15, 2006, knowingly sell or offer to sell a controlled substance in an amount greater than 50 times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Michael J. Esber admittedly sold, without prescriptions, an amount in excess of 3,800 tablets of hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance. Michael J. Esber admitted that he sold small quantities each time, and Michael J. Esber admitted to altering pharmacy records, so as to avoid detection. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (4) Michael J. Esber did, on or about December 10, 2005, intentionally create and/or knowingly possess a false or forged prescription, to wit: Michael J. Esber created Rx #375019 and kept it on file in the pharmacy to cover for his thefts and trafficking of the drug, hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (5) Michael J. Esber did, on or about January 27, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Michael J. Esber created Rx #379159 and kept it on file in the pharmacy to cover for his thefts and trafficking of the drug, hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (6) Michael J. Esber did, on or about March 23, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Michael J. Esber altered Rx #384407 and kept it on file in the pharmacy to cover for his thefts and trafficking of the drug, hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (7) Michael J. Esber did, on or about April 6, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Michael J. Esber altered Rx #385633 and kept it on file in the pharmacy to cover for his thefts and trafficking of the drug, Percocet 5/325 mg, a Schedule II controlled substance. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (8) Michael J. Esber did, on or about April 8, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Michael J. Esber created Rx #385825 and kept it on file in the pharmacy to cover for his thefts and trafficking of the drug, hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (9) Michael J. Esber did, on or about April 20, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Michael J. Esber created Rx #386963 and kept it on file in the pharmacy to cover for his thefts and trafficking of the drug, hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

- (10) Michael J. Esber did, on or about April 27, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Michael J. Esber altered Rx #387596 and kept it on file in the pharmacy to cover for his thefts and trafficking of the drug, Percocet 5/325 mg, a Schedule II controlled substance. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (11) On or about December 20, 2006, Michael J. Esber pled guilty to one (1) count of Trafficking in Drugs, a felony of the second degree, under Section 2925.03 (A)(1) (C)(2) (e) of the Ohio Revised Code; one (1) count of Theft of Drugs, a felony of the fourth degree under Section 2913.02 (A)(2) and/or (A)(3) of the Ohio Revised Code; two (2) counts of Illegal Processing of Drug Documents, felonies of the fourth degree under Section 2925.23 (A) and/or (B)(1) (F)(1) of the Ohio Revised Code; and, five (5) counts of Illegal Processing of Drug Documents, felonies of the fifth degree under Section 2925.23 (A) and/or (B)(1) (F)(2) of the Ohio Revised Code. State of Ohio vs. Michael J. Esber, Case No. 2006CR1481, Stark County Common Pleas Court. Michael J. Esber was sentenced to a total of two years in prison.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (11) of the Findings of Fact constitute being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraphs (2) through (11) 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) The State Board of Pharmacy concludes that paragraphs (3) through (11) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION 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 Michael J. Esber on July 24, 2006.

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 takes the following actions in the matter of Michael J. Esber:

- (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 permanently the pharmacist identification card, No. 03-1-13497, held by Michael J. Esber 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 permanently the pharmacist identification card, No. 03-1-13497, held by Michael J. Esber effective as of the date of the mailing of this Order.

(C) 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 revokes permanently the pharmacist identification card, No. 03-1-13497, held by Michael J. Esber effective as of the date of the mailing of this Order.

Pursuant to Section 4729.16(B) of the Ohio Revised Code, Michael J. Esber must return his 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.

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

Section 119.12 of the Ohio Revised Code authorizes an appeal from this Order. An order that denied admission to an examination, or denied the issuance or renewal of a license or registration, or revoked or suspended a license, may be appealed to the court of common pleas in the Ohio county of your place of business or in your Ohio county of residence. Any other order may be appealed to the Court of Common Pleas of 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 both the State Board of Pharmacy and the appropriate court within fifteen (15) days after the mailing of this Order and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

ORDER MAILED & EFFECTIVE: APRIL 12, 2007

CERTIFIED MAIL/Return Receipt
7004 2510 0006 9805 7714

WTW/lf

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

c: Sally Ann Steuk, Assistant Attorney General
John P. Alexander, Jr., Attorney for Respondent; David A. Looney Co., LPA; 1735 South Main Street; Akron, Ohio 44301



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SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING

July 24, 2006

Michael J. Esber, R.Ph.
1807 California Avenue
Louisville, Ohio 44641

Re: Ohio Registered Pharmacist
Number 03-1-13497

Dear Mr. Esber:

In accordance with Section 3719.121(B) of the Ohio Revised Code, the Board has determined that there is clear and convincing evidence that the continuation of your professional practice presents a danger of immediate and serious harm to others. The reasons for the Board's action are that you have committed any and/or all of the following acts:

- (1) Records of the Board of Pharmacy indicate that you were originally licensed in the State of Ohio on February 26, 1980, pursuant to examination, and are currently licensed to practice pharmacy in the State of Ohio. Records further reflect during the relevant time periods stated herein, you were the Responsible Pharmacist at Rite Aid Discount Pharmacy #2387, 2103 East Tuscarawas Avenue, Canton, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code. Further, you were previously disciplined by the Board on July 16, 2001, and again on March 11, 2004.
- (2) You did, from May, 2005, through July 15, 2006, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Rite Aid Discount Pharmacy #2387, beyond the express or implied consent of the owner, to wit: you admittedly stole approximately 320 tablets of hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance, each month for the purpose of trafficking the drugs. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (3) You did, from May, 2005, through July 15, 2006, knowingly sell or offer to sell a controlled substance in an amount greater than 50 times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: you admittedly sold, without prescriptions, an amount in excess of 3,800 tablets of hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance. You admitted that you sold small quantities each time, and you admitted to altering pharmacy records, so as to avoid detection. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

YOU ARE HEREBY NOTIFIED that Section 3719.121(B) of the Ohio Revised Code states, in pertinent part:

- (B) If the board under which a person has been issued a license, . . . , . . . determines that there is clear and convincing evidence that continuation of the person's professional practice or method of prescribing or personally furnishing controlled substances presents a danger of immediate and serious harm to others, the board may suspend the person's license, . . . , . . . , without a prior hearing.

WHEREFORE, PURSUANT TO SECTION 3719.121(B) OF THE OHIO REVISED CODE, YOU ARE HEREBY NOTIFIED THAT YOUR REGISTRATION AND LICENSE TO PRACTICE PHARMACY IN THE STATE OF OHIO ARE HEREBY SUSPENDED. FURTHER, PURSUANT TO RULE 4729-9-01(F) OF THE OHIO ADMINISTRATIVE CODE, DURING THIS TERM OF SUSPENSION YOU MAY NOT BE EMPLOYED BY OR WORK IN ANY FACILITY LICENSED BY THE BOARD OF PHARMACY TO POSSESS OR DISTRIBUTE DANGEROUS DRUGS. This suspension shall remain in effect until a final adjudication order becomes effective, during which time you may not engage in the practice of pharmacy.

YOU ARE FURTHER NOTIFIED that Section 4729.16 of the Ohio Revised Code states, in pertinent part:

- (A) The State Board of Pharmacy, after notice and hearing in accordance with Chapter 119. of the Ohio Revised Code, may revoke, suspend, limit, place on probation, or refuse to grant or renew an identification card under this chapter, or may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Ohio Revised Code for a similar offense, or in the case of a violation of a section of the Ohio Revised Code that does not bear a penalty, a monetary penalty or forfeiture of no more than five hundred dollars, if the Board finds a pharmacist or pharmacy intern:
 - (1) Guilty of a felony or gross immorality;
 - (2) Guilty of dishonesty or unprofessional conduct in the practice of pharmacy;
 - (3) Addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render the pharmacist or pharmacy intern unfit to practice pharmacy;
 - (4) Has been convicted of a misdemeanor related to, or committed in, the practice of pharmacy;
 - (5) Guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of this chapter, sections 3715.52 to 3715.72 or Chapter 2925. or 3719. of the Revised Code;
 - (6) Guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy;
 - (7) Guilty of knowingly lending the pharmacist's or pharmacy intern's name to an illegal practitioner of pharmacy or having professional connection with an illegal practitioner of pharmacy;

- (8) Guilty of dividing or agreeing to divide remuneration made in the practice of pharmacy with any other individual, including, but not limited to, any licensed health professional authorized to prescribe drugs or any owner, manager, or employee of a health care facility, residential care facility, or nursing home;
- (9) Has violated the terms of a consult agreement entered into pursuant to section 4729.39 of the Revised Code;
- (10) Has committed fraud, misrepresentation, or deception in applying for or securing a license or identification card issued by the board under this chapter or under Chapter 3715. or 3719. of the Revised Code.

IF YOU DESIRE A HEARING, such request shall be mailed to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126. YOUR REQUEST MUST BE IN WRITING, AND MUST BE RECEIVED IN THE OFFICE OF THE OHIO STATE BOARD OF PHARMACY ON OR PRIOR TO THE THIRTIETH (30TH) DAY FOLLOWING THE MAILING DATE OF THIS NOTICE. You may appear at such hearing in person, by your attorney, or by such other representative as is permitted to practice before the agency, or you may present your position, arguments or contentions in writing; and, at this hearing, you may also present evidence and examine any witnesses appearing for and against you.

YOU ARE FURTHER ADVISED that if there is no request for such a hearing received by the Board on or prior to the thirtieth (30th) day following the mailing of this notice, the Ohio State Board of Pharmacy, upon consideration of the aforementioned allegations against you, may take action without such a hearing.

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 (10) days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

BY ORDER OF THE STATE BOARD OF PHARMACY

WTW:lf (D-060724-002)

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



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-030910-012)

In The Matter Of:

MICHAEL J. ESBER, R.Ph.

1807 California Avenue
Louisville, Ohio 44641
(R.Ph. No. 03-1-13497)

INTRODUCTION

THE MATTER OF MICHAEL J. ESBER CAME FOR HEARING ON FEBRUARY 2, 2004, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT P. GIACALONE, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ELIZABETH I. GREGG, R.Ph.; LAWRENCE J. KOST, R.Ph.; AND JAMES E. TURNER, R.Ph.

MICHAEL J. ESBER WAS REPRESENTED BY DAVID W. GRAUER AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. Louis Robert Mandi, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses

1. Michael J. Esber, R.Ph., Respondent

State's Exhibits

1. Copy of Notice of Opportunity For Hearing letter [09-10-03]
1A-1D. Procedurals
2. Copy of State Board of Pharmacy Order in re Michael J. Esber, R.Ph. [07-16-01]
3. Copy of Children's Hospital Medical Center of Akron HEM/ONC Outpatient Visit Form for Iana Carter [02-13-03]
4. Copy of Rx #02387 275870 [02-14-03]
5. Copy of Rite Aid Pharmacy bottle label for Rx #275870 [02-14-03]
6. Copy of Children's Hospital Medical Center of Akron Adverse Drug Reaction Reporting Form for Iana Carter [not dated]
7. Rite Aid - E. Tuscarawas Customer History Report for Iana Carter [06-01-02 to 02-15-03]
8. Copy of Dangerous Drug Distributor Inspection Report of Rite-Aid Discount Pharmacy #2387 [04-03-03]

9. Notarized Statement of Michael John Esber, R.Ph. [04-03-03]

Respondent's Exhibits

A. Copy of Drug Information Center Pharmacy Health Services letter to Rite Aid Pharmacists [10-09-03]

B-G. Copy of six Letters of Support [09-30-03 to 01-20-04]

H. Customer Service Award for Michael Esber [not dated]

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 Michael J. Esber was originally licensed by the State of Ohio as a pharmacist on February 26, 1980, pursuant to examination, and is currently licensed to practice pharmacy in Ohio. Records further reflect during the relevant time periods stated herein, Michael J. Esber was the Responsible Pharmacist at Rite Aid Discount Pharmacy #2387 pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code. Further, the Board previously disciplined Michael J. Esber on July 16, 2001.
- (2) Michael J. Esber did, on or about February 14, 2003, misbrand a drug, to wit: when Michael J. Esber received a prescription for morphine oral solution, Mr. Esber dispensed Rx #02387 275870, a dosage five times greater than that which had been prescribed to a 16-month-old, 9.2 kg child, and that had not been prescribed by the physician. The patient was subsequently transported by EMS to Children's Hospital Medical Center of Akron with respiratory depression, cyanosis, and hypoxia. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

CONCLUSION OF LAW

The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Michael J. Esber as follows:

- (A) The State Board of Pharmacy hereby places on probation for six months the pharmacist identification card, No. 03-1-13497, held by Michael J. Esber effective as of the date of the mailing of this Order. The terms of probation are as follows:
 - (1) Michael J. Esber must submit to the Board, prior to the end of the probation period, documentation of successful completion of two hours (0.2 CEUs) of approved continuing pharmacy education in preventing medication errors, which may not also be used for license renewal.

- (2) Michael J. Esber must not violate the drug laws of Ohio, any other state, or the federal government.
 - (3) Michael J. Esber must abide by the rules of the State Board of Pharmacy.
 - (4) Michael J. Esber must comply with the terms of this Order.
 - (5) Michael J. Esber's license is deemed not to be in good standing until successful completion of the probationary period.
 - (6) Any violation of probation may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.
- (B) The State Board of Pharmacy hereby imposes a monetary penalty of two hundred fifty dollars (\$250.00) on Michael J. Esber and payment of 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.

Michael J. Esber 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 (Aye-5/Nay-0).

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE MARCH 11, 2004



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-010405-059)

In The Matter Of:

MICHAEL J. ESBER, R.Ph.

1807 California Avenue

Louisville, Ohio 44641

(R.Ph. No. 03-1-13497)

INTRODUCTION

THE MATTER OF MICHAEL J. ESBER CAME FOR HEARING ON JUNE 5, 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.

MICHAEL J. ESBER WAS NOT REPRESENTED BY COUNSEL 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) Michael J. Esber, R.Ph., Respondent
- (2) Larry Iorio
- (3) Kathleen Esber, Respondent's Wife

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter dated April 5, 2001.
- (2) Exhibit 1A--Hearing Request letter dated April 13, 2001.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated April 16, 2001.
- (4) Exhibit 1C--Copy of three-page Amendment/Addendum Notice dated April 18, 2001.

- (5) Exhibit 1D--Copy of Pharmacist computer record of Michael J. Esber.
- (6) Exhibit 2--Two-page Statement of Rebecca Edwards signed and notarized on March 21, 2001.
- (7) Exhibit 3--Rite Aid prescription number 02387 201160 for Rebecca Edwards dated January 16, 2001.
- (8) Exhibit 4--Copy of two-page Rite Aid-East Tuscarawas Customer History Report for January 1, 1999, to March 23, 2001 of Rebecca Edwards dated March 23, 2001.
- (9) Exhibit 5--Copy of Rite Aid Dispensing System Report for prescription number 201160 dated March 23, 2001.
- (10) Exhibit 6--Three-page Statement of Michael J. Esber signed and notarized on March 22, 2001.
- (11) Exhibit 7--Rite Aid prescription number 02387 201834 for Rebecca Edwards dated January 22, 2001.
- (12) Exhibit 8-- Copy of Rite Aid Dispensing System Report for prescription number 201834 dated March 23, 2001.
- (13) Exhibit 9--Rite Aid prescriptions numbered 02387 201451 and 02387 201452 for Jerry Walls dated January 18, 2001.
- (14) Exhibit 10--Copy of five-page Rite Aid-Wales Avenue Northeast Customer History Report for January 1, 1999, to March 26, 2001 of Jerry Walls dated March 26, 2001.
- (15) Exhibit 11-- Copy of Rite Aid Dispensing System Report for prescription number 201451 dated March 26, 2001.

Respondent's Exhibits:

- (1) Exhibit A--Copy of Resume of Michael J. Esber, not dated.
- (2) Exhibit B--Letter from Mark B. Alper, R.Ph. dated June 1, 2001.
- (3) Exhibit C--Copy of letter from Craig A. Smith, R.Ph., not dated.
- (4) Exhibit D--Copy of Letter of Recommendation from Barbara J. Campbell, R.Ph. dated May 23, 2001.
- (5) Exhibit E--Copy of letter from Laurie M. Loria, R.Ph. dated May 29, 2001.
- (6) Exhibit F--Copy of letter from Lillian S. Weiss, R.Ph. dated May 1, 2001.
- (7) Exhibit G--Copy of letter from John A. Nicora, R.Ph. dated May 30, 2001.
- (8) Exhibit H--Copy of letter from Greg Matronia, not dated.
- (9) Exhibit I--Copy of letter from Nelda J. Dugan dated May 22, 2001.
- (10) Exhibit J--Letter from Pamela S. Welsh, not dated.
- (11) Exhibit K--Copy of letter from Carl Esber, not dated.
- (12) Exhibit L--Copy of letter from Nancy Dugan, not dated.
- (13) Exhibit M--Copy of letter from Mary Walls dated May 31, 2001.
- (14) Exhibit N--Letter from Jerry Walls dated May 31, 2001.
- (15) Exhibit O--Copy of letter from Edward J. McKenna IV dated May 30, 2001.
- (16) Exhibit P--Copy of letter from Mr. and Mrs. Norman Esber, not dated.
- (17) Exhibit Q--Copy of calendar for the month of January, 2001 with handwritten notes.
- (18) Exhibit R--Copy of two Rite Aid Pharmacy Patient Counseling/Eligibility Forms for Rebecca Edwards, one signed and dated January 16, 2001 and one signed but date is illegible.

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 Michael J. Esber was originally licensed in the State of Ohio on February 26, 1980, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio. Records further indicate that Michael J. Esber is the Responsible Pharmacist at Rite Aid Discount Pharmacy #2387, 2103 East Tuscarawas Avenue, Canton, Ohio 44707-2864 pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) Michael J. Esber did, on or about January 16, 2001, when dispensing medication to a patient, write profane comments on the label, to wit: when dispensing prescription number 02387 201160, written for Terazol 3, Sig 1 HS X 3, Michael J. Esber wrote on the label: "Insert 1 applicatorful into the hole of your choice at bedtime for 3 nites." Such conduct is in violation of Section 3715.64 of the Ohio Revised Code.
- (3) Michael J. Esber did, on or about January 22, 2001, when dispensing medication to a patient, write profane comments on the label, to wit: when dispensing prescription number 02387 201834, written for Diflucan 150mg, Sig HS, Michael J. Esber wrote on the label: "Shove 1 of these white fuckin tabs in thy orafice of your choice today." Such conduct is in violation of Section 3715.64 of the Ohio Revised Code.
- (4) Michael J. Esber did, on or about January 18, 2001, when dispensing medication to a patient, write profane comments on the label, to wit: when dispensing prescription number 02387 201451, written for Amoxil 500mg, Sig 1 TID, Michael J. Esber wrote on the label: "Shove 1 of these fuckers in mouth 3 times a day." Such conduct is in violation of Section 3715.64 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 (4) of the Findings of Fact constitute being guilty of gross immorality 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 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) through (4) 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 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 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Michael J. Esber:

- (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 the pharmacist identification card, No. 03-1-13497, held by Michael J. Esber for one year.

(B) Further, the Board stays the suspension and places Michael J. Esber's identification card on probation for one year effective as of the date of the mailing of this Order. The terms of probation are as follows:

- (1) Michael J. Esber must show completion of 0.3 CEUs (three hours) of continuing pharmacy education in Board-approved Jurisprudence, which may not be used toward the requirement for standard renewal, within one year from the date of the mailing of this Order.
- (2) Michael J. Esber must not violate the drug laws of the State of Ohio, any other state, or the federal government.
- (3) Michael J. Esber must abide by the rules of the State Board of Pharmacy.
- (4) Michael J. Esber must comply with the terms of this Order.

Michael J. Esber 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.

(C) 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 five hundred dollars (\$500.00) due and owing within thirty days of the issuance of this Order. The monetary penalty 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-6/Nay-2).

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE JULY 16, 2001