



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-940630-092)

In The Matter Of:

JOSEPH WILLIAM CAHALL, R.Ph.

42 Carriage Station Drive

Cincinnati, Ohio 45245

(R.Ph. No. 03-1-17291)

INTRODUCTION

THE MATTER OF JOSEPH WILLIAM CAHALL CAME ON FOR CONSIDERATION ON APRIL 27, 1995, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: RUTH A. PLANT, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JOSEPH WILLIAM CAHALL WAS NOT PRESENT NOR WAS HE REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY ROBERT J. McCLAREN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) William T. Winsley, Ohio State Board of Pharmacy
- (2) Scott Koronich, Loss Control Manager, K-Mart
- (3) Cheryl Rooks, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity letter dated June 30, 1994.

- (2) Exhibit 1A--Pharmacist File Front Sheet of Joseph William Cahall showing original date of registration as July 29, 1988; and Renewal Application for Pharmacist License, No 03-1-17291, of Joseph William Cahall dated July 27, 1993.
- (3) Exhibit 2--Handwritten Statement of Karen L. Brauer signed and notarized on April 25, 1995; and copy of Accountability Statement of K-Mart Pharmacy #7644 for Roxiprin, not dated; and copy of K-Mart #7644 Controlled Drug Inventory Sheet dated from May 1, 1992, through May 12, 1994.
- (4) Exhibit 3--Two Springboro Division of Police Property Sheets, numbered E-038-94 and E-039-94, dated May 16, 1994.
- (5) Exhibit 4--Copy of handwritten statement of Joseph Cahall signed and witnessed on May 16, 1994; and attached copy of Miranda Warning signed by Joseph W. Cahall.
- (6) Exhibit 5--Drug Audit Accountability Sheet of K-Mart #4747 for Vicodin dated May 31, 1994.
- (7) Exhibit 6--Drug Audit Accountability Sheet of K-Mart #4747 for Percocet 5 dated May 31, 1994.
- (8) Exhibit 7--Drug Audit Accountability Sheet of K-Mart #4747 for Tenuate 25mg dated May 31, 1994.
- (9) Exhibit 8--Drug Audit Accountability Sheet of K-Mart #4747 for Phentermine 30mg dated May 31, 1994; and Drug Audit Accountability Sheet of K-Mart #4747 for Fastin 30mg dated May 31, 1994.
- (10) Exhibit 9--Drug Audit Accountability Sheet of K-Mart #4747 for Tussionex, Codiclear, Hycotuss, and Hycodan syrups dated May 31, 1994.
- (11) Exhibit 10--Certified Sentencing Entry in the Warren County Common Pleas Court, Case No. 94CR16185 of Joseph W. Cahall dated December 1, 1994; and Certified Entry Suspending Defendant's Driving Privileges in the Warren County Common Pleas Court, Case No. 94CR16185 of Joseph W. Cahall dated December 1, 1994.
- (12) Exhibit 11--Two-page letter from Joseph W. Cahall dated January 5, 1995.

Respondent's Exhibits:

- (1) None

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) On June 30, 1994, Joseph William Cahall was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing.
- (2) Attempt was made to deliver the letter of June 30, 1994, via the United States Postal Service, return receipt requested; however, the letter was returned, marked "Authorized Time For Forwarding Has Expired", to the Ohio State Board of Pharmacy on July 13, 1994. Pursuant to Section 119.07 of the Ohio Revised Code, after attempt and failure by the Board to issue a notice required by Chapter 119. by registered mail, return receipt requested, personal service was instituted. As demonstrated by personal delivery record dated October 4, 1994, Joseph William Cahall received the letter of June 30, 1994, informing him of the allegations against him, and his rights.

- (3) Joseph William Cahall submitted a letter, dated January 5, 1995, setting forth his position and contentions in writing, and has not requested a hearing in this matter.
- (4) Records of the Board indicate that Joseph William Cahall was originally licensed to practice pharmacy in the state of Ohio on July 29, 1988. On June 30, 1994, Joseph William Cahall's license was summarily suspended in accordance with Section 3719.121(B) of the Ohio Revised Code.
- (5) Joseph William Cahall did, from April 1, 1994, through May 7, 1994, with the purpose to deprive the owner, K-Mart Pharmacy, 10560 Harrison Avenue, Harrison, Ohio 45030, knowingly obtain or exert control over dangerous drugs, beyond the express or implied consent of the owner, to wit: Joseph William Cahall stole 30 units of Oxycodone/ASA from his employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (6) Joseph William Cahall did, on or about May 16, 1994, with the purpose to deprive the owner, K-Mart Pharmacy, 625 W. Central Avenue, Springboro, Ohio 45066, knowingly obtain or exert control over dangerous drugs, beyond the express or implied consent of the owner, to wit: Joseph William Cahall stole and admitted to stealing the following dangerous drugs from his employer:
 - (a) 7 16oz bottles of Hycotuss cough syrup;
 - (b) 5 bottles of Hydrocodone cough syrup;
 - (c) 8 bottles of Codiclear cough syrup; and
 - (d) 20 Tenuate tablets.

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

- (7) Joseph William Cahall did, from April 25, 1994, through May 16, 1994, with the purpose to deprive the owner, K-Mart Pharmacy, 625 W. Central Avenue, Springboro, Ohio 45066, knowingly obtain or exert control over dangerous drugs, beyond the express or implied consent of the owner, to wit: Joseph William Cahall stole the following controlled substances from his employer:

<u>SUPPLY</u>	<u>DRUG</u>	<u>QUANTITY</u>	<u>% OF DRUG</u>
Vicodin and Hydrocodone w/APAP 5/500mg		211	1.61%
Percocet 5 and Oxycodone w/APAP 5/500mg		124	5.58%
Tenuate 25mg and Diethylpropion HCl 25mg		40	100.00%
Fastin and Phentermine 30mg		236	23.96%
Codiclear, Hycotuss, Hycodan & Tussionex Cough Syrups		18,650ml	61.8%

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

- (8) Joseph William Cahall was, on or about December 1, 1994, convicted in the Common Pleas Court of Warren County, Ohio, for Theft of Drugs, in violation of Section 2913.02(A)(2) of the Ohio Revised Code, a felony of the fourth degree.

- (9) Joseph William Cahall is addicted to or abusing drugs or is impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Joseph William Cahall admitted stealing drugs from his employer; Joseph William Cahall has been observed consuming drugs while practicing pharmacy; and, Joseph William Cahall was arrested and transported to a hospital due to drug-induced impairment.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (8) of the Findings of Fact constitutes being guilty of a felony and 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 (5) through (9) 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 paragraph (9) of the Findings of Fact constitutes 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 paragraphs (5) through (9) 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 Chapter 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 June 30, 1994.

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

- (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 the pharmacist identification card, No. 03-1-17291, held by Joseph William Cahall 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 the pharmacist identification card, No. 03-1-17291, held by Joseph William Cahall 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 the pharmacist identification card, No. 03-1-17291, held by Joseph William Cahall effective as of the date of the mailing of this Order.

- (D) On the basis of the Findings of Fact and paragraph (4) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-1-17291, held by Joseph William Cahall effective as of the date of the mailing of this Order.

Division (B) of Section 4729.16 of the Revised Code provides 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 the 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.