



OHIO STATE BOARD OF PHARMACY

77 South High Street, Room 1702; Columbus, OH 43215-6126

-Equal Opportunity Employer and Service Provider-

TEL: 614/466-4143

E-MAIL: exec@bop.state.oh.us

FAX: 614/752-4836

TTY/TDD: Use the Ohio Relay Service: 1-800/750-0750

URL: <http://www.pharmacy.ohio.gov>

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-010409-062)

In The Matter Of:

JOSEPH NEIL GIOIELLO, R.Ph.

8550 Bayberry NE
Warren, Ohio 44484
(R.Ph. No. 03-1-17346)

INTRODUCTION

THE MATTER OF JOSEPH NEIL GIOIELLO CAME FOR HEARING ON OCTOBER 1, 2001, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ANN D. ABELE, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

JOSEPH NEIL GIOIELLO WAS REPRESENTED BY DAMIAN P. DeGENOVA AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

(1) None

Respondent's Witnesses:

- (1) Joseph Neil Gioiello, R.Ph., Respondent
- (2) Todd Jaros, R.Ph.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Hearing Request letter from Joseph N. Gioiello dated March 30, 2001.
- (2) Exhibit 1A--Copy of Hearing Schedule letter dated and postmarked April 9, 2001.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated April 9, 2001 and postmarked April 12, 2001.

- (4) Exhibit 1C--Copy of Hearing Schedule letter dated May 17, 2001.
- (5) Exhibit 1D--Copy of Ohio Pharmacist Computer Record of Joseph Neil Gioiello.
- (6) Exhibit 1E--Notice of Counsel letter from Damian P. DeGenova dated September 19, 2001.
- (7) Exhibit 2--Copy of six-page Order of the State Board of Pharmacy, Docket No. D-000809-004, in the matter of Joseph Neil Gioiello, R.Ph. dated December 18, 2000.
- (8) Exhibit 2A--Copy of four-page Statement of Joseph N. Gioiello notarized July 5, 2000.
- (9) Exhibit 3--Copy of five-page Dangerous Drug Distributor Inspection Report of Troutman Drug Company dated July 6, 2000.
- (10) Exhibit 4--Copy of twelve Accountability Statements for Audit Review at Troutman Drug covering April 29, 1999 to July 5, 2000 for the following drugs: Xanax 0.5mg, Alprazolam 0.5mg, Valium 5mg, Diazepam 5mg, Valium 10mg, Diazepam 10mg, Vicodin 5/500, Lortab 5/500, Hydrocet 5/500, Hydrocodone Bitartrate/APAP 5/500, Vicodin ES 7.5/750, and Hydrocodone Bitartrate 7.5/750.
- (11) Exhibit 5--Copy of two Accountability Statements for Audit Review at Troutman Drug covering April 29, 1999 to July 5, 2000 for Methylphenidate 10mg and Ritalin 10mg.
- (12) Exhibit 6--Copy of seventeen Accountability Statements for Audit Review at Troutman Drug covering April 29, 1999 to July 10, 2000 for the following drugs: Percocet 10/650, Percocet 5/325, Roxicet 5/325, Tylox, Roxilox, Dexedrine 5mg, Dexedrine Span. 5mg, Ritalin 5mg, Methylphenidate 5mg, Ritalin 20mg, Methylphenidate 20mg, Ritalin ER 20mg, Methylphenidate ER 20mg, OxyContin 10mg, OxyContin 20mg, OxyContin 40mg, and OxyContin 80mg.
- (13) Exhibit 7--Copy of three-page Statement of Joseph Neil Gioiello notarized October 3, 2000.
- (14) Exhibit 8--Two-page copy of DEA Form 106, Report of Theft or Loss of Controlled Substances, of Troutman Drug dated October 5, 2000.
- (15) Exhibit 9--Copy of page one of the Ohio State Board of Pharmacy Newsletter of May 2000, OH Vol. 21, No. 4; and copy of page three of DEA/NABP Compliance News, not dated.
- (16) Exhibit 10--Copy of five-page Indictment, State of Ohio vs. Joseph Neil Gioiello, Case No. "Direct Presentment", Trumbull County Common Pleas Court, May Fourth Term, 2001; Copy of six-page Finding on Guilty Plea To Indictment, State of Ohio vs. Joseph N. Gioiello, Case No. 01-CR-465, Trumbull County Common Pleas Court, dated August 13, 2001.

Respondent's Exhibits:

- (1) Exhibit A--Copy of page one of the Ohio State Board of Pharmacy Newsletter of May, 2000, OH Vol. 21, No. 4; and copy of page three of DEA/NABP Compliance News, not dated.
- (2) Exhibit B--Copy of P.R.O., Inc. Pharmacist's Recovery Contract of Joe Gioiello dated January 28, 2001; Two-page letter from John J. Mallozzi, B.S. Ed., CCDC-III-E, dated September 11, 2001; Two-page copy of Community Solutions Association Discharge Summary And Continuing Care Plan of Joseph Gioiello dated September 12, 2001.
- (3) Exhibit C--Copy of thirty-nine pages of drug screen reports for specimens collected from Joseph Gioiello on July 25, 2000, August 9, 2000, August 25, 2000, September 13, 2000, September 25, 2000, October 12, 2000, November 8, 2000, November 27, 2000, December 20, 2000, January 24, 2001, February 10, 2001, March 8, 2001, April 5, 2001, April 27, 2001, May 21, 2001, June 15, 2001, July 11, 2001, August 3, 2001, and August 30, 2001.
- (4) Exhibit D--Twelve pages of support group attendance records dated from July 9, 2000 to September 25, 2001.

- (5) Exhibit E--Twelve pages of letters from the following: Dharl Chintan CCDCIIE, LSW dated August 27, 2001; David F. Merk dated September 9, 2001; Emil Dontenville, R.Ph. dated August 3, 2001; Robert F. Tschinkel dated September 10, 2001; Robert J. Dougherty, R.Ph. dated August 4, 2001; Gwen Mentzer, R.N., C.N.O.R., not dated; Edward L. Carson, Esq. dated September 6, 2001; Jeff (no last name given) dated August 28, 2001; Jeffrey A. Wallace, R.Ph. and Elizabeth W. Wallace, R.Ph. dated September 10, 2001; and David A. Pishotti, R.Ph. dated September 11, 2001.
- (6) Exhibit F--Copy of four-page Motion For Drug Treatment in Lieu of Conviction, State of Ohio vs. Joseph Neil Gioiello, Case No. 2001 CR 00465, Trumbull County Common Pleas Court, dated July 23, 2001; Copy of three-page Entry Finding Defendant Eligible For Intervention In Lieu Of Conviction, State of Ohio vs. Joseph Neil Gioiello, Case No. 01-CR-465, Trumbull County Common Pleas Court, dated August 7, 2001; Copy of six-page Finding on Guilty Plea To Indictment, State of Ohio vs. Joseph N. Gioiello, Case No. 01-CR-465, Trumbull County Common Pleas Court, dated August 13, 2001; Letter from James E. Tallman dated September 6, 2001; Copy of Trumbull County Adult Probation Department Repayment Agreement for Joseph Gioiello, Docket No. 01-CR-456; Copy of Trumbull County Court of Common Pleas Probation Department Rules of Supervision for Joseph Gioiello, Docket No. 01-CR-465, dated August 20, 2001; Copy of Trumbull County Common Pleas Adult Probation Receipt No. 19634 dated September 5, 2001; Copy of Trumbull County Common Pleas Court Receipt No. 39991 dated September 5, 2001.
- (7) Exhibit G--Two-page Summary of Pharmacy Continuing Education Certificates; Thirty-four pages of copies of Continuing Pharmacy Education Certificates dated from February 26, 1999 to May 12, 2001.

FINDING 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 Joseph Neil Gioiello has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-000809-004, effective December 18, 2000.

ACTION OF THE BOARD

On the basis of the Finding of Fact set forth above, the State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card, No. 03-1-17346, held by Joseph Neil Gioiello to practice pharmacy in the state of Ohio and places Joseph Neil Gioiello on probation for five years from the date the identification card is issued, with the following conditions:

- (A) Joseph Neil Gioiello must enter into a contract, signed within thirty 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 each month for the first twelve months and then at least once every three months for the remaining four years.
 - (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) Results of all drug 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 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) Joseph Neil Gioiello 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 Joseph Neil Gioiello's progress towards recovery and what Mr. Gioiello 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 Joseph Neil Gioiello'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) Joseph Neil Gioiello may not serve as a responsible pharmacist.
 - (3) Joseph Neil Gioiello may not destroy, assist in, or witness the destruction of controlled substances.
 - (4) Joseph Neil Gioiello must abide by the contract from the treatment provider and any violation must be reported to the Board immediately.
 - (5) Joseph Neil Gioiello must not violate the drug laws of the State of Ohio, any other state, or the federal government.
 - (6) Joseph Neil Gioiello must abide by the rules of the State Board of Pharmacy.
 - (7) Joseph Neil Gioiello must comply with the terms of this Order.

Joseph Neil Gioiello 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.



OHIO STATE BOARD OF PHARMACY

77 South High Street, Room 1702; Columbus, OH 43215-6126

-Equal Opportunity Employer and Service Provider-

TEL: 614/466-4143

E-MAIL: exec@bop.state.oh.us

FAX: 614/752-4836

TTY/TDD: Use the Ohio Relay Service: 1-800/750-0750

URL: <http://www.pharmacy.ohio.gov>

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-000809-004)

In The Matter Of:

JOSEPH NEIL GIOIELLO, R.Ph.

8550 Bayberry N.E.

Warren, Ohio 44484

(R.Ph. No. 03-1-17346)

INTRODUCTION

THE MATTER OF JOSEPH NEIL GIOIELLO CAME FOR HEARING ON NOVEMBER 7, 2000, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); 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; JAMES E. TURNER, R.Ph.

JOSEPH NEIL GIOIELLO WAS REPRESENTED BY ROBERT J. GARRITY, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) George Pavlich, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Joseph Neil Gioiello, R.Ph., Respondent
- (2) James Tallman, R.Ph.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of four-page Summary Suspension Order/Notice of Opportunity for Hearing letter dated August 9, 2000.
- (2) Exhibit 1A--Hearing Request letter dated August 11, 2000.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated August 21, 2000.

- (4) Exhibit 1C--Notification of Counsel of Record letter dated October 12, 2000.
- (5) Exhibit 1D--Copy of three-page Amendment Notice letter dated October 17, 2000.
- (6) Exhibit 1E--Copy of Pharmacist File Front Sheet of Joseph Neil Gioiello showing original date of registration as July 29, 1988; and two-page copy of Renewal Application for Pharmacist License, No. 03-1-17346, for a license to practice pharmacy in Ohio from September 15, 1999, through September 15, 2000, of Joseph Neil Gioiello dated July 12, 1999.
- (7) Exhibit 2--Copy of four-page Statement of Joseph Neil Gioiello signed and notarized on July 5, 2000.
- (8) Exhibit 3--Five-page Dangerous Drug Distributor Inspection Report of Troutman Drug Co. signed and dated on July 6, 2000.
- (9) Exhibit 4--Copy of 12 Accountability Statement sheets for Audit Review of Troutman Drug covering April 29, 1999 through July 5, 2000, for the following drugs: Xanax 0.5mg, Alprazolam 0.5mg, Valium 5mg, Diazepam 5mg, Valium 10mg, Diazepam 10mg, Vicodin 5/500, Lortab 5/500, Hydrocet 5/500, Hydrocodone bitartrate/APAP 5/500, Vicodin ES 7.5/750, Hydrocodone bitartrate 7.5/750.
- (10) Exhibit 5--Copy of two Accountability Statement sheets for Audit Review of Troutman Drug covering April 29, 1999 through July 5, 2000, for the following drugs: Methylphenidate 10mg and Ritalin 10mg.
- (11) Exhibit 6--Copy of 17 Accountability Statement sheets for Audit Review of Troutman Drug covering April 29, 1999 through July 10, 2000, for the following drugs: Percocet 10/650, Percocet 5/325, Roxicet 5/325, Tylox, Roxilox, Dexedrine 5mg, Dexedrine Span. 5mg, Ritalin 5mg, Methylphenidate 5mg, Ritalin 20mg, Methylphenidate 20mg, Ritalin ER 20mg, Methylphenidate ER 20mg, Oxycontin 10mg, Oxycontin 20mg, Oxycontin 40mg, Oxycontin 80mg.
- (12) Exhibit 7--Three-page Statement of Joseph Neil Gioiello signed and notarized on October 3, 2000.
- (13) Exhibit 8--Copy of Report of Theft or Loss of Controlled Substances of Troutman Drug, DEA Registration Number AT 5783318, dated October 5, 2000.
- (14) Exhibit 9--Copy of pages 1 and 3 of the May 2000 State Board Newsletter.

Respondent's Exhibits:

- (1) Exhibit A--Copy of pages 1 and 3 of the May 2000 State Board Newsletter.
- (2) Exhibit B--Copy of the following treatment records for Joseph Gioiello, Client ID# 6671: Initial Assessment Summary dated July 24, 2000; Admitting Diagnosis and Disposition Report dated July 24, 2000; Summary of Psychological Evaluation dated July 31, 2000; Treatment Plan dated August 7, 2000; and Continuing Care Agreement dated September 20, 2000.
- (3) Exhibit C--Two-page copy of Pharmacists Rehabilitation Organization Pharmacist's Recovery Contract of Joe Gioiello signed and dated October 29, 2000.
- (4) Exhibit D--Copy of two support group attendance verification sheets dated from July 9, 2000, through November 5, 2000.
- (5) Exhibit E--Copies of six two-page urine drug screen reports dated July 27, 2000, August 10, 2000, August 26, 2000, September 15, 2000, September 26, 2000, and October 26, 2000.
- (6) Exhibit F--Copies of 13 pages of letters from the following: Sonia Gioiello dated November 2, 2000; Betty Gioiello dated November 1, 2000; Neil Gioiello dated October 31, 2000; Todd Jaros, not dated; A Recovering Addict/Sponsor dated November 1, 2000; Joseph Glover and Edward Amicucci dated September 18, 2000; John J. Mallozzi dated October 30, 2000; Elizabeth W. Wallace dated October 27, 2000; Jeffrey A. Wallace dated October 27, 2000; and Edward L. Ting dated November 3, 2000.

- (7) Exhibit G--Copy of Resume of Joseph N. Gioiello, not dated, and 26 pages of copies of continuing education participation verification sheets dated from February 26, 1999, through October 28, 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 Joseph Neil Gioiello was originally licensed to practice pharmacy in the state of Ohio on July 29, 1988, pursuant to examination, and that on August 9, 2000, Joseph Neil Gioiello's license was summarily suspended in accordance with Divisions (A) and (B) of Section 3719.121 of the Ohio Revised Code.
- (2) Joseph Neil Gioiello is addicted to liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Joseph Neil Gioiello voluntarily notified the Board that he is addicted to the use of controlled substances; that he has stolen controlled substances for personal abuse; and, that he abused controlled substances while practicing pharmacy for relief of "daily tension and anxiety" related to his work schedule. Such conduct indicates that Joseph Neil Gioiello falls within the ambit of Sections 3719.121 and 4729.16(A)(3) of the Ohio Revised Code.
- (3) Joseph Neil Gioiello did, on or about April 29, 1999, through July 10, 2000, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Troutman Drug Co., 501 Robbins Avenue, Niles, Ohio, beyond the express or implied consent of the owner, to wit: Joseph Neil Gioiello stole the following controlled substances:

<u>Drug</u>	<u>Quantity</u>
Xanax .5mg	146
Alprazolam .5mg	1502
Valium 5mg	608
Diazepam 5mg	555
Valium 10mg	2473
Diazepam 10mg	1795
Vicodin 5/500	271
Lortab 5/500	9
Hydrocet 5/500	32
Vicodin ES 7.5/750	1714
Hydrocodone Bitartrate 7.5/750	1463
Methylphenidate 10mg	1426
Ritalin 10mg	44
Roxicet 5/325	558
Roxilox	11
Methylphenidate 5mg	25
Ritalin 20mg	7
Methylphenidate ER 20mg	59
Oxycontin 10mg	4
Oxycontin 20mg	90
Oxycontin 40mg	94

Such conduct is in violation of Section 2913.02 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 dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) 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 paragraph (2) 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.
- (3) 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 willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 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 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 suspends indefinitely the pharmacist identification card, No. 03-1-17346, held by Joseph Neil Gioiello and such suspension is effective as of the date of the mailing of this Order.

- (A) Joseph Neil Gioiello, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
- (B) Joseph Neil Gioiello, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return the 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.

Further, on or after July 5, 2001, the Board will consider any petition filed by Joseph Neil Gioiello for a hearing, pursuant to Ohio Revised Code Chapter 119., for reinstatement. The Board will only consider reinstatement of the license to practice pharmacy in Ohio if the following conditions have been met:

- (A) Joseph Neil Gioiello must enter into a contract, signed within sixty 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, upon signing, mail a copy of the contract to the Board office. The contract must provide that:

- (1) Random, observed urine drug screens shall be conducted at least once each month.
 - (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) Alprazolam, diazepam, hydrocodone bitartrate, and alcohol must be added to the standard urine drug screen. A Breathalyzer may be used to test for alcohol, but the test must be conducted by an appropriately certified individual 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.
- (2) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
- (3) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (B) Joseph Neil Gioiello must provide, at the reinstatement petition hearing, documentation of the following:
 - (1) Compliance with the contract required above (e.g.-proof of giving the sample within twelve hours of notification and copies of all drug and alcohol screen reports, meeting attendance records, treatment program reports, etc.);
 - (2) Compliance with the continuing pharmacy education requirements set forth in Chapter 4729-7 of the Ohio Administrative Code as applicable and in effect on the date of petitioning the Board for reinstatement;
 - (3) Compliance with the terms of this Order.
- (C) If reinstatement is not accomplished within three years from the effective date of this Order, Joseph Neil Gioiello must show successful completion of the NAPLEX examination or an equivalent examination approved by the Board.

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

MOTION CARRIED.

SO ORDERED.