



OHIO STATE BOARD OF PHARMACY

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

-Equal Opportunity Employer and Service Provider-

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-010313-048)

In The Matter Of:

MICHAEL H. LINHART, R.Ph.

727 Shelton Road

Salem, Ohio 44460

(R.Ph. No. 03-1-18835)

INTRODUCTION

THE MATTER OF MICHAEL H. LINHART CAME FOR HEARING ON AUGUST 8, 2005, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE R. EASTMAN, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph. AND DOROTHY S. TEATER, PUBLIC MEMBER.

MICHAEL H. LINHART WAS REPRESENTED BY DANIEL D. CONNOR. 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 Witness

1. Michael H. Linhart, R.Ph., Respondent

State's Exhibits

1. Copy of Summary Suspension Order/Notice of Opportunity For Hearing letter [03-13-01]
 - 1A-1E. Procedurals
 - 1F. Addendum Notice letter [02-22-05]
 - 1G. Procedural
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.

12.

Respondent's Exhibits

A. PRO Pharmacist's Recovery Contract for Michael H. Linhart [03-28-01]; Support Group Attendance Records [03-19-01 to 07-26-05];

and Treatment Reports [03-16-99 to 10-02-00]

Twenty pages of Evaluation

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 Board of Pharmacy indicate that Michael H. Linhart was originally licensed by the State of Ohio as a pharmacist on July 29, 1991, pursuant to examination, and that his license to practice pharmacy in Ohio was summarily suspended effective March 13, 2001.

(2)

(3)

(4)

(5)

CONCLUSIONS OF LAW

(1)

(2) The State Board of Pharmacy concludes that paragraphs (4) and (5) 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 (2) through (5) 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 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 H. Linhart on March 13, 2001.

- (A) On the basis of the Findings of Fact and the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends for two years the pharmacist identification card, No. 03-1-18835, held by Michael H. Linhart and such suspension is effective as of the date of the mailing of this Order.
 - (1) Michael H. Linhart, 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.
 - (2) Michael H. Linhart, pursuant to Section 4729.16(B) of the Ohio Revised Code, 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.
- (B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes on Michael H. Linhart a monetary penalty of one thousand dollars (\$1,000.00) due and owing within thirty days of the mailing 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.
- (C) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby places Michael H. Linhart on probation for five years effective upon reinstatement of his identification card. The terms of probation are as follows:
 - (1) Michael H. Linhart must enter into a new contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) approved treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. The contract must provide that:
 - (a) Random, observed urine drug screens shall be conducted at least once each month for the first year and then at least once every three months for the remaining four years.
 - (i) 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.
 - (ii) Results of all drug screens must be negative. Refusal of a drug screen or a diluted urine screen is equivalent to a positive result. Any positive results, including those that may

have resulted from ingestion of food, but excluding false positives that resulted from medication legitimately prescribed, indicate a violation of the contract.

- (b) The intervener/sponsor shall provide copies of all drug screen reports to the Board in a timely fashion.
 - (c) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - (d) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (2) Michael H. Linhart 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:
- (a) The written report and documentation provided by the treatment program pursuant to the contract, and
 - (b) A written description of Michael H. Linhart 's progress towards recovery and what Michael H. Linhart has been doing during the previous three months.
- (D) Other terms of probation are as follows:
- (1) Michael H. Linhart must take and pass, within the last year of his suspension, the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination approved by the Board. If Mr. Linhart does not pass the examination within the one year period, his license will remain suspended until this condition has been achieved.
 - (2) Michael H. Linhart must take and pass, within the last year of his suspension, the Multistate Pharmacy Jurisprudence Examination (MPJE) or an equivalent examination approved by the Board. If Mr. Linhart does not pass the examination within the one year period, his license will remain suspended until this condition has been achieved.
 - (3) The State Board of Pharmacy hereby declares that Michael H. Linhart'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.
 - (4) Michael H. Linhart may not serve as a responsible pharmacist.
 - (5) Michael H. Linhart may not destroy, assist in, or witness the destruction of controlled substances.
 - (6) Michael H. Linhart must abide by the contract with his treatment provider and must immediately report any violation of the contract to the Board.

- (7) Michael H. Linhart must not violate the drug laws of Ohio, any other state, or the federal government.
- (8) Michael H. Linhart must abide by the rules of the State Board of Pharmacy.
- (9) Michael H. Linhart must comply with the terms of this Order.
- (10) Michael H. Linhart's license is deemed not in good standing until successful completion of the probationary period.
- (11) 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.

Michael H. Linhart 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-4/Nay-2/Abstain-1).

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 filing the original Notice of Appeal with the State Board of Pharmacy and a copy with 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: September 19, 2005

By: _____

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



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ADDENDUM NOTICE

February 22, 2005

Michael H. Linhart, R.Ph.

727 Shelton Avenue

Salem, Ohio 44460

Re: Ohio Registered Pharmacist
Number 03-1-18835

Dear Mr. Linhart:

YOU ARE HEREBY NOTIFIED that, in addition to the allegations stated in the March 13, 2001, Summary Suspension Order/Notice of Opportunity letter, the following allegations will also be considered, as numbered:

(5)

YOU ARE HEREBY ADVISED that Section 4729.16 of the Ohio Revised Code states in pertinent part that:

(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, or may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Revised Code for a similar offense, or in the case of a violation of a section of the Revised Code that does not bear a penalty, a monetary penalty or forfeiture of not 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 of the Revised Code, Chapter 2925. Or 3719. of the Revised Code, or any rule adopted by the board under those provisions;

(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.

AS PREVIOUSLY NOTED IN THE SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY letter dated March 13, 2001, and with regard to your adjudication hearing scheduled for August 8, 2005, 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.

BY ORDER OF THE STATE BOARD OF PHARMACY

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

WTW:lf (010313-048)

CERTIFIED MAIL/Return Receipt
7003 0500 0002 4347 4751

cc: Sally Ann Steuk, Assistant Attorney General
Daniel D. Connor, Attorney for Respondent; Connor Behal L.L.P.; 501 South High Street;
Columbus, Ohio 43215



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SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING

March 13, 2001

Michael H. Linhart, R.Ph.
727 Shelton Road
Salem, Ohio 44460

Re: Ohio Registered Pharmacist
Number 03-1-18835

Dear Mr. Linhart:

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 July 29, 1991, pursuant to examination, and are currently licensed to practice pharmacy in the State of Ohio.
- (2)
- (3)
- (4)

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 IS 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, 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.

IF YOU REQUEST A HEARING within 30 days of the time of the mailing of this notice, such will be afforded. 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 HEREBY ADVISED that if you do not request such a hearing within thirty (30) days of the mailing of this notice, the 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 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

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