



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-950925-020)

In The Matter Of:

ERIC DOUGLAS VOGELSONG, R.Ph.

12327 B State Route 104

Lucasville, Ohio 45648

(R.Ph. No. 03-1-20259)

INTRODUCTION

THE MATTER OF ERIC D. VOGELSONG CAME TO HEARING ON OCTOBER 19, 1995, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; WAYNE C. MILLER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

ERIC DOUGLAS VOGELSONG WAS REPRESENTED BY KEVIN L. SHOEMAKER, AND THE STATE OF OHIO WAS REPRESENTED BY LAWRENCE D. PRATT, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Joseph Holliday, Ohio State Board of Pharmacy
- (2) Sergeant Charles Horner, Southern Ohio Drug Task Force
- (3) Patrolman Todd Bryant, Southern Ohio Drug Task Force
- (4) Jerry Binion
- (5) Cathy Meyers
- (6) Robert Amiet, 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 September 25, 1995.
- (2) Exhibit 1A--Request for Hearing and Certificate of Service dated October 4, 1995.

- (3) Exhibit 1B--Hearing Schedule letter dated October 5, 1995.
- (4) Exhibit 1C--Pharmacist File Front Sheet of Eric Douglas Vogelsong showing original date of registration as July 28, 1994.
- (5) Exhibit 1D--Renewal Application for Pharmacist License, No. 03-1-20259, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of Eric Douglas Vogelsong dated June 13, 1995.
- (6) Exhibit 3--Three-page Dangerous Drug Distributor Inspection Report of Vogelsong's Family Pharmacy, Terminal Distributor License No. 02-107350, dated September 8, 1993.
- (7) Exhibit 3A--Three-page Dangerous Drug Distributor Inspection Report of Vogelsong's Family Pharmacy, Terminal Distributor License No. 02-107350, response to pink sheet, received in the Board office on September 21, 1993.
- (8) Exhibit 4--Five Practical Experience Affidavits of Eric D. Vogelsong received in the Board office on the following dates: November 1, 1993; August 6, 1993; August 21, 1992; May 27, 1992; January 16, 1992.
- (9) Exhibit 5--Two-page Dangerous Drug Distributor Inspection Report of Vogelsong's Family Pharmacy, Terminal Distributor License No. 02-107350, dated September 19, 1995.
- (10) Exhibit 6--Copy of page 1931 of the Physicians' Desk Reference, 47th Edition.
- (11) Exhibit 7--Copy of page 1392 of the Physicians' Desk Reference, 47th Edition.
- (12) Exhibit 8--Copies of pages 1391 and 1392 of the Physicians' Desk Reference, 47th Edition.
- (13) Exhibit 9--Copy of page 1956 of the Physicians' Desk Reference, 47th Edition.
- (14) Exhibit 11--Sealed record regarding patient identification.
- (15) Exhibit 12.1--Copy of six-page list of exempt narcotic sales made by Vogelsong's Family Pharmacy to Jerry Binion from September 18, 1991, through October 10, 1995.
- (16) Exhibit 12.2--Copy of six-page list of exempt narcotic sales made by Vogelsong's Family Pharmacy to Cathy Meyers from September 18, 1991, through September 11, 1995.
- (17) Exhibit 12.3--Copy of three-page list of exempt narcotic sales made by Vogelsong's Family Pharmacy to Patient #3 from September 9, 1994, through September 7, 1995.
- (18) Exhibit 12.4--Copy of three-page list of exempt narcotic sales made by Vogelsong's Family Pharmacy to Patient #4 from July 8, 1991, through September 7, 1995.
- (19) Exhibit 12.5--Copy of nine-page list of exempt narcotic sales made by Vogelsong's Family Pharmacy to Patient #5 from February 14, 1989, through October 10, 1995.
- (20) Exhibit 12.6--Copy of three-page list of exempt narcotic sales made by Vogelsong's Family Pharmacy to Patient #6 from September 16, 1991, through September 6, 1995.
- (21) Exhibit 12.7--Copy of three-page list of exempt narcotic sales made by Vogelsong's Family Pharmacy to Patient #7 from September 9, 1994, through September 7, 1995.
- (22) Exhibit 13--Samuel's Products Exempt Narcotics Register of Vogelsong's Family Pharmacy dated from August 8, 1994, through September 8, 1995. This exhibit is in the possession of the Southern Ohio Drug Task Force.

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) Records of the State Board of Pharmacy indicate that Eric Douglas Vogelsong was originally licensed to practice pharmacy in the state of Ohio on July 28, 1994, and on September 25, 1995, his license was summarily suspended in accordance with Section 3719.121(B) of the Ohio Revised Code.
- (2) Eric Douglas Vogelsong did, from August 8, 1994, to September 8, 1995, knowingly sell a controlled substance in an amount greater than three times bulk but less than one hundred times bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Eric Douglas Vogelsong sold the following numbers of preparations of exempt narcotics to the same individuals without a legitimate medical purpose:

<u>Patient #</u>	<u>13-month period</u>	<u>Total sales to the same individual</u>
1	95	175
2	93	176
3	65	131
4	59	117
5	45	86
6	54	100
7	56	108

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, 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.
- (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 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.

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 September 25, 1995.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Eric Douglas Vogelsong:

- (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 suspends the pharmacist identification card, No. 03-1-20259, held by Eric Douglas Vogelsong indefinitely and such suspension is effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of

the Ohio Administrative Code, Eric Douglas Vogelsong may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.

- (1) Twelve months after the effective date of this Order, the Board will reinstate Eric Douglas Vogelsong's license to practice pharmacy in Ohio provided that he takes and successfully completes the Federal Drug Law Examination and the state jurisprudence examination offered by the Board prior to that date. If Eric Douglas Vogelsong has not successfully completed the examinations prior to twelve months from the effective date of this Order, his license will remain under suspension until such condition has been achieved.
- (2) Upon reinstatement of Eric Douglas Vogelsong's license to practice pharmacy in Ohio, his identification card will be placed on probation for five years with the following stipulations and conditions:
 - (a) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of pharmacy hereby declares that Eric Douglas Vogelsong's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns.
 - (b) Eric Douglas Vogelsong may not serve as a responsible pharmacist.
 - (c) Eric Douglas Vogelsong must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (d) Eric Douglas Vogelsong must abide by the rules of the Ohio State Board of Pharmacy.
 - (e) Eric Douglas Vogelsong must comply with the terms of this Order.

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.

- (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 imposes a monetary penalty of five thousand dollars (\$5,000.00) 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, 17th Floor, Columbus, Ohio 43266-0320.

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.