



# OHIO STATE BOARD OF PHARMACY

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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-960308-043)

In The Matter Of:

**MARK S. ZIELINSKI, R.Ph.**

RD2, Box 4300

Ellwood City, Pennsylvania 16117

(R.Ph. No. 03-1-20971)

### INTRODUCTION

THE MATTER OF MARK S. ZIELINSKI CAME TO HEARING ON SEPTEMBER 17, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; JOHN L. HANNA, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

MARK S. ZIELINSKI, THROUGH COUNSEL, WAIVED HIS RIGHT TO AN ADJUDICATION HEARING, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

### SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Robert L. Cole, Ohio State Board of Pharmacy
- (2) Officer Randy Olenick, Weirton Police Department, Weirton, West Virginia
- (3) Officer Frank Starko, Weirton Police Department, Weirton, West Virginia
- (4) Deputy Michael White, Weirton Police Department, Weirton, West Virginia
- (5) George Pavlich, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity for Hearing letter dated March 8, 1996.
- (2) Exhibit 1A--Hearing Request letter dated March 18, 1996.
- (3) Exhibit 1B--Hearing Schedule letter dated March 25, 1996.
- (4) Exhibit 1C--Waiver of Hearing letter dated July 5, 1996.
- (5) Exhibit 1D--Pharmacist File Front Sheet of Mark S. Zielinski showing original date of registration as March 7, 1995; and Renewal Application for Pharmacist License, No. 03-1-20971, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of Mark S. Zielinski dated July 25, 1995.
- (6) Exhibit 2--Certified copy of four-page Order in the Magistrate Court of Brooke County, West Virginia, Case No. 96-F-06, of Mark Stanley Zielinski dated September 6, 1996.
- (7) Exhibit 3--Copy of three-page West Virginia Uniform Incident/Offense Report Form, ORI No. WV0150200, in the matter of Mark S. Zielinski dated February 22, 1996, and February 23, 1996.
- (8) Exhibit 4--Copy of two-page West Virginia State Police Forensic Laboratory Report, Lab No. D9600650, signed by J. L. Hudson and dated May 29, 1996; and West Virginia State Police, Forensic Section, Case Submission Report, Lab No. D96-650 dated February 29, 1996.
- (9) Exhibit 5--Four-page copy of evidence in the possession of the West Virginia State Police, and prepared by Officer F. Starko, consisting of 38 units of Vicodin, 5 units of Valium, 2 units of Anexsia, 5 units of Lorazepam, and 4 units of Cylert.
- (10) Exhibit 6--Copy of two-page report, Case No. 96-015, of Deputy Michael White, Hancock Brook Weirton Drug Task Force, dated February 22, 1996.
- (11) Exhibit 7A--Ohio State Board of Pharmacy Accountability Statement of Rite Aid #2391 for Vicodin 5/500 and Hydrocodone Bitartrate 5/500 dated August 28, 1996; Ohio State Board of Pharmacy Accountability Statement of Rite Aid #2391 for Vicodin 5/500 dated August 28, 1996; and Ohio State Board of Pharmacy Accountability Statement of Rite Aid #2391 for Hydrocodone Bitartrate 5/500 dated August 28, 1996.
- (12) Exhibit 7B--Ohio State Board of Pharmacy Accountability Statement of Rite Aid #2391 for Ativan 2mg and Lorazepam 2mg dated August 28, 1996; Ohio State Board of Pharmacy Accountability Statement of Rite Aid #2391 for Ativan 2mg dated August 28, 1996; and Ohio State Board of Pharmacy Accountability Statement of Rite Aid #2391 for Lorazepam 2mg dated August 28, 1996.
- (13) Exhibit 7C--Ohio State Board of Pharmacy Accountability Statement of Rite Aid #2391 for Cylert 37.5mg dated August 28, 1996.
- (14) Exhibit 7D--Ohio State Board of Pharmacy Accountability Statement of Rite Aid #2391 for Anexsia 7.5/650 dated August 28, 1996.
- (15) Exhibit 7E--Ohio State Board of Pharmacy Accountability Statement of Rite Aid #2391 for Valium 10mg and Diazepam 10mg dated August 28, 1996; Ohio State Board of Pharmacy Accountability Statement of Rite Aid #2391 for Diazepam 10mg dated August 28, 1996; and Ohio

State Board of Pharmacy Accountability Statement of Rite Aid #2391  
for Valium 10mg dated August 28, 1996.

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 March 8, 1996, Mark S. Zielinski 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) Mark S. Zielinski, by and through counsel, William E. Galloway, requested a hearing and a hearing was scheduled in accordance with Chapter 119. of the Ohio Revised Code.
- (3) On or about July 5, 1996, Mark S. Zielinski, by and through counsel, submitted a waiver of the adjudication hearing scheduled for September 17, 1996.
- (4) Records of the Board indicate that Mark S. Zielinski was originally licensed to practice pharmacy in the state of Ohio on March 7, 1995, and his license was summarily suspended in accordance with Section 3719.121(B) of the Ohio Revised Code on March 8, 1996.
- (5) Mark S. Zielinski did, on or about February 22, 1996, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Rite Price Pharmacy in Steubenville, Ohio, beyond the express or implied consent of the owner, to wit: Mark S. Zielinski stole the following controlled substances from his employer: 38 unit doses of Vicodin 5mg, 5 unit doses of Valium 10mg, 5 unit doses of Lorazepam 2mg, 4 unit doses of Cylert, and 2 unit doses of Anexsia 7.5/650. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (6) Mark S. Zielinski did, on or about February 22, 1996, knowingly obtain, possess, or use a controlled substance, to wit: when arrested by the Weirton Police Department, Mark S. Zielinski was dazed, confused, unsteady on his feet, and Mark S. Zielinski failed a field sobriety test. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (7) Mark S. Zielinski is addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code, to wit: when arrested by the Weirton Police Department, Mark S. Zielinski informed the officers that he

had removed controlled substances from the pharmacy in which he worked, that he was authorized to do so, and that while practicing pharmacy Mark S. Zielinski regularly kept medication returned to him by customers of the pharmacy in which he worked (for purposes of abuse and/or redispensing).

#### CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (5) through (7) 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 paragraphs (6) and (7) of the Findings of Fact constitute being addicted to or abusing 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 paragraph (6) 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 March 8, 1996.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Mark S. Zielinski:

- (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. 03-1-20971, held by Mark S. Zielinski 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. 03-1-20971, held by Mark S. Zielinski 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. 03-1-20971,

held by Mark S. Zielinski effective as of the date of the mailing of this Order.

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

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

MOTION CARRIED.

SO ORDERED.