



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-060315-065)

In The Matter Of:

JOHN JOSEPH EKIERT, R.Ph.

6136 Southern Hills Court
Canfield, Ohio 44406
(R.Ph. No. 03-1-24554)

INTRODUCTION

THE MATTER OF JOHN JOSEPH EKIERT CAME FOR HEARING ON JUNE 5, 2007, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JAMES E. TURNER, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; HEATHER L. PASQUALE, R.Ph.; AND DOROTHY S. TEATER, PUBLIC MEMBER.

JOHN JOSEPH EKIERT WAS REPRESENTED BY CATHERINE M. BALLARD AND SEAN MCGLONE. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witness

1. George Pavlich, Ohio State Board of Pharmacy

Respondent's Witnesses

1. John Joseph Ekiert, R.Ph., Respondent
2. Wanda Mrozek, R.Ph.
3. Robert Ekiert, R.Ph.
4. Gregory Stephen Zinni, M.D.

State's Exhibits

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [03-15-06]
 - 1A-1B. Procedurals
 - 1C. Addendum Notice [05-22-06]
 - 1D-1E. Procedurals
 - 1F. Addendum Notice [01-31-07]
 - 1G-1I. Procedurals
2. Seven color photographs [not dated]
 - 2A. Mahoning Valley Law Enforcement Task Force Investigative Report, Case File 05-09/182 [03-07-06]
3. Thirteen photographs [03-07-06]

4. Notarized Statement of John Ekiert, R.Ph. [03-08-06]
5. Bureau of Criminal Identification and Investigation Laboratory Report [04-24-06]
6. Mahoning Valley Law Enforcement Task Force Investigative Report, Case File 05-09/182 [09-30-05]
7. Bureau of Criminal Identification and Investigation Laboratory Report [10-17-05]
8. Mahoning Valley Law Enforcement Task Force Investigative Report, Case File 05-09/182 [02-03-06]
9. Bureau of Criminal Identification and Investigation Laboratory Report [03-03-06]
10. Mahoning Valley Law Enforcement Task Force Investigative Report, Case File 05-09/182 [02-13-06]
11. Bureau of Criminal Identification and Investigation Laboratory Report [03-09-06]
12. Mahoning Valley Law Enforcement Task Force Investigative Report, Case File 05-09/182 [02-16-06]
13. Mahoning Valley Law Enforcement Task Force Investigative Report, Case File 05-09/182 [02-25-06]
14. Bureau of Criminal Identification and Investigation Laboratory Report [03-30-06]
15. Copy of three Photographs [02-25-06]
16. Four Drug Accountability Statements at Hometown Pharmacy for Vicodin ES 7.5/750; Vicodin 5/500; Vicodin HP 10/660; Lortab 7.5/500 [03-07-06]
17. DEA Report of Theft or Loss of Controlled Substances of Hometown Pharmacy [05-16-06]
18. Waiver of Indictment, State of Ohio v. John Ekiert, Case No. 06CR1149, Mahoning County Common Pleas Court [10-24-06]; Plea of Guilty [12-04-06]; Judgment Entry [02-05-07]

Respondent's Exhibits

- A. Neil Kennedy Recovery Clinic Discharge Summary [07-27-06]
- B. Support Group Attendance Records [03-20-06 to 05-30-07]
- C. Affidavit of Harry Wollet [05-29-07]
- D. Affidavit of Kathleen Shannon [05-31-07]
- E. Affidavit of Stuart Strasfeld [05-07]
- F. Affidavit of Mark Strine [05-31-07]
- G. Affidavit of Garry L. Mrozek [05-31-07]

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 John Joseph Ekiert was originally licensed by the State of Ohio as a pharmacist on April 3, 2001, pursuant to reciprocity, and that his license was summarily suspended on March 15, 2006. Records further reflect during the relevant time periods stated herein, John Joseph Ekiert was the Responsible Pharmacist at The Hometown Pharmacy, 3623 South Meridian Road, Youngstown, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) John Joseph Ekiert did, on or about March 7, 2006, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: without a prescription and not for a legitimate medical purpose, John Joseph Ekiert sold 1,300 hydrocodone/APAP 7.5/750 mg tablets to an individual who in turn intended to sell the drugs to others. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

- (3) John Joseph Ekiert did, on or about July 28, 2005, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: without a prescription and not for a legitimate medical purpose, John Joseph Ekiert sold 100 hydrocodone/APAP 7.5/750 mg tablets to an individual who in turn sold the drugs to others. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (4) John Joseph Ekiert did, on or about February 3, 2006, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: without a prescription and not for a legitimate medical purpose, John Joseph Ekiert sold at least 290 hydrocodone/APAP 7.5/750 mg tablets to an individual who in turn sold the drugs to others. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (5) John Joseph Ekiert did, on or about February 13, 2006, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: without a prescription and not for a legitimate medical purpose, John Joseph Ekiert sold at least 100 hydrocodone/APAP 7.5/750 mg tablets to an individual who in turn sold the drugs to others. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (6) John Joseph Ekiert did, on or about February 16, 2006, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: without a prescription and not for a legitimate medical purpose, John Joseph Ekiert sold 100 hydrocodone/APAP 7.5/750 mg tablets to an individual who in turn sold the drugs to others. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (7) John Joseph Ekiert did, on or about February 25, 2006, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: without a prescription and not for a legitimate medical purpose, John Joseph Ekiert sold 100 hydrocodone/APAP 7.5/750 mg tablets to an individual who in turn sold the drugs to others. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (8) John Joseph Ekiert did, from May 21, 2001, through March 7, 2006, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Hometown Pharmacy, beyond the express or implied consent of the owner, to wit: John Joseph Ekiert stole the following Schedule III controlled substances from his employer:

hydrocodone bitartrate/APAP 7.5/750 mg	15,718
hydrocodone bitartrate/APAP 5/500 mg	1,282
hydrocodone bitartrate/APAP 10/660 mg	289
hydrocodone/APAP 7.5/500 mg	140

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

- (9) On or about December 4, 2006, John Joseph Ekiert pled guilty to four (4) counts of Conspiracy to Trafficking in Drugs, felonies of the fourth degree, under Sections 2923.01 and 2923.03(A)(1)(C)(2)(d) of the Ohio Revised Code and one (1) count of Trafficking in Drugs, a felony of the fourth degree, under Section 2925.03

(A)(1)(C)(2)(c) of the Ohio Revised Code. State of Ohio vs. John Ekiert, Case No. 06CR1149, Mahoning County Common Pleas Court.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (9) of the Findings of Fact constitute being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraphs (2) 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) The State Board of Pharmacy concludes that paragraphs (2) through (7) and (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 Chapters 2925. and 3719. 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 John Joseph Ekiert on March 15, 2006.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of John Joseph Ekiert as follows:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-24554, held by John Joseph Ekiert 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, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-24554, held by John Joseph Ekiert 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, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-24554, held by John Joseph Ekiert 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, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-24554, held by John Joseph Ekiert effective as of the date of the mailing of this Order.

John Joseph Ekiert, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his license to practice (pocket ID card) and registration (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.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-7/Nay-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 the filing of 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: July 12, 2007

By: _____
William T. Winsley, M.S., R.Ph., Executive Director

WTW/lf

CERTIFIED MAIL/Return Receipt
7004 2510 0006 9804 1843

c: Sally Ann Steuk, Assistant Attorney General
Catherine M. Ballard & Sean McGlone, Attorneys for Respondent; Bricker & Eckler; 100
South Third Street; Columbus, Ohio 43215