



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-070809-003)

In The Matter Of:

CINDY DONNER MALHER, R.Ph.

9935 Northbrook Valley Drive, Apt. 3

Fort Wayne, Indiana 46825

(R.Ph. No. 03-1-26042)

INTRODUCTION

THE MATTER OF CINDY DONNER MALHER CAME FOR HEARING ON JANUARY 9, 2008, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: GREGORY BRAYLOCK, R.Ph. (presiding); ELIZABETH I. GREGG, R.Ph.; RICHARD F. KOLEZYNSKI, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; HEATHER L. PASQUALE, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; JAMES E. TURNER, R.Ph.; AND JEROME J. WIESENHAHN, R.Ph.

CINDY DONNER MALHER WAS NOT PRESENT NOR WAS SHE REPRESENTED BY COUNSEL. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witness

1. John C. Whittington, D.O., R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses

None

State's Exhibits

1. Notice of Opportunity For Hearing letter [08-09-07]
1A-1F. Procedurals
- 2-2G. Trihealth Pharmacy "Live" Orders by Pharmacist [10-22-06 to 11-04-06]
3. Compilation of Respondent's Residential Addresses from November 1977 to June 2007
4. Compilation of Respondent's Employers from March 2004 to June 2007
5. Journal/Judgment Entry, Liberty Twp vs Cindy R. Donner, Case No. CRB 0500043, Butler County Court, Area II [03-16-05]; Journal Entry [03-16-05]; Two Computer Screen Print Outs Referencing Restitution Payment [12-06-07]
6. Two Renewal Applications for Pharmacist License of Cindy Donner Malher for periods of 09-15-05 to 09-15-06 and 09-15-06 to 09-15-07

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Respondent's Exhibits

None

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witness, 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 Cindy Donner Malher was originally licensed by the State of Ohio as a pharmacist on February 3, 2004, pursuant to reciprocity, and is currently licensed to practice pharmacy in the State of Ohio.

(2) Cindy Donner Malher did, on or about October 23, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

(3) Cindy Donner Malher did, on or about October 24, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

(4) Cindy Donner Malher did, on or about October 25, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

(5) Cindy Donner Malher did, on or about October 26, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

(6) Cindy Donner Malher did, on or about October 27, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

(7) Cindy Donner Malher did, on or about October 30, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she

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dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

(8) Cindy Donner Malher did, on or about October 31, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

(9) Cindy Donner Malher did, on or about November 1, 2006, while not a pharmacist or a pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: though Cindy Donner Malher's license to practice pharmacy had lapsed, she dispensed medication and otherwise practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

(10) Cindy Donner Malher did, on or about various and unknown dates in 2006, fail to notify the Board her change(s) of address, to wit: Cindy Donner Malher has changed her residence to at least four cities, but failed to notify the Board within thirty days after the date of any change. Such conduct is in violation of Rule 4729-5-06(A) of the Ohio Administrative Code.

(11) Cindy Donner Malher did, on or about various and unknown dates in 2006, fail to notify the Board her change(s) of place(s) of employment or the principal place where she practices pharmacy, to wit: Cindy Donner Malher changed employers several times, but did not notify the Board within thirty days after the date of any change. Such conduct is in violation of Rule 4729-5-06(B) of the Ohio Administrative Code.

(12) Cindy Donner Malher did, on or about September 26, 2005, and again on November 6, 2006, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Cindy Donner Malher indicated on her pharmacist license renewal application that she had not been charged with a crime when in fact she had been convicted of Passing Bad Checks in violation of Section 2913.11 of the Ohio Revised Code, a misdemeanor of the first degree, on March 16, 2005. Liberty Twp vs Cindy R. Donner, Case No. CRB 0500043, Butler County Court, Area II. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraph (12) of the Findings of Fact constitutes being guilty of 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) and (12) 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 (11) 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

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4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

(4) The State Board of Pharmacy concludes that paragraph (12) of the Findings of Fact constitutes being guilty of committing fraud, misrepresentation, or deception in applying for or securing a license or identification card issued by the Board under Chapter 4729. of the Revised Code as provided in Division (A)(10) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy takes the following actions in the matter of Cindy Donner Malher:

(A) 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. 03-1-26042, held by Cindy Donner Malher and such suspension is effective as of the date of the mailing of this Order.

(1) Cindy Donner Malher, 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) Cindy Donner Malher, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return her 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) Further, after five years from the effective date of this Order the Board will consider reinstatement provided that Cindy Donner Malher personally appears before the State Board of Pharmacy.

Upon such time as the Board may consider reinstatement, Cindy Donner Malher will be afforded a Chapter 119. hearing. At such time, the Board may consider reinstatement with or without restrictions and/or conditions as the Board deems appropriate under the circumstances.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-8/Nay-0).

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

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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: February 6, 2008

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

WTW/lf

CERTIFIED MAIL/Return Receipt
7004 2510 0006 9804 4318

c: Sally Ann Steuk, Assistant Attorney General