



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-060613-086)

In The Matter Of:

LINO DIMATTEO, R.Ph.
85 Bermont Avenue
Munroe Falls, Ohio 44262
(R.Ph. No. 03-1-26154)

INTRODUCTION

THE MATTER OF LINO DIMATTEO 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.

LINO DIMATTEO WAS NOT REPRESENTED BY COUNSEL. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. Robert Amiet, Jr., R.Ph., Ohio State Board of Pharmacy
2. Lino DiMatteo, R.Ph., Respondent

Respondent's Witnesses

None

State's Exhibits

1. Notice of Opportunity For Hearing letter [06-13-06]
1A-1E. Procedurals
1F. Summary Suspension Order/Notice of Opportunity for Hearing [12-29-06]
1G-II. Procedurals
2. Rx #2454876 [09-10-04]
3. Rx #2455104 [09-23-04]
4. Lake County Crime Laboratory Report [07-12-05]
5. Letter from the New Jersey State Board of Medical Examiners License Verification [08-09-05]
6. Copy of New Jersey Prescription Form [not dated]
7. Rx #2227261 [10-13-04]
8. Rx #2227407 [10-28-04]
9. Rx #2227562 [11-11-04]

10. Rx #2227697 [11-24-04]
11. Rx 2227798 [12-05-04]
12. Rx #2209515 [12-26-04]
13. Rx #2209591 [01-11-05]
14. Application for Registration As A Distributor of Dangerous Drugs for Hood's Pharmacy [04-25-06]
15. Complaint, State of Ohio vs. Lino DiMatteo, Case No. 05-1074, Franklin County Municipal Court [01-13-05]
16. Indictment, State of Ohio v. Lino DiMatteo, Case No. 05CR11-7356, Franklin County Common Pleas Court [11-01-05]; Entry [03-09-06]
17. Transcript of Sentencing [01-05-06]
- 17A. Transcript of Sentencing [03-07-06]
18. Indictment, State of Ohio vs. Lino DiMatteo, Case No. 06CR-05-4144, Franklin County Common Pleas Court [05-31-06]; Entry Plea [12-06-06]; Judgment Entry [01-29-07]

Respondent's Exhibits

- A. Report from James J. Sardo, M.D. [02-22-07]; The Drug Store Patient Profile of Lino DiMatteo [01-01-06 to 05-30-07]

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 State Board of Pharmacy indicate that Lino DiMatteo was originally licensed by the State of Ohio as a pharmacist on May 4, 2004, pursuant to reciprocity, and that his license to practice pharmacy in Ohio was summarily suspended effective December 29, 2006.

(2) Lino DiMatteo did, on or about the following dates, intentionally make or utter and/or knowingly possess false or forged prescriptions, to wit: Lino DiMatteo created and possessed the following prescriptions for OxyContin 40 mg, a Schedule II controlled substance, not for a legitimate medical purpose:

<u>DATE</u>	<u>QTY</u>	<u>Rx #</u>
09-07-04	60	2454876
09-20-04	120	2455104

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

(3) Lino DiMatteo did, on or about the following dates, intentionally make or utter and/or knowingly possess false or forged prescriptions, to wit: Lino DiMatteo created and possessed the following prescriptions for oxycodone 30 mg, a Schedule II controlled substance, not for a legitimate medical purpose:

<u>DATE</u>	<u>QTY</u>	<u>Rx #</u>
10-11-04	120	2227261
10-25-04	120	2227407
11-08-04	120	2227562
11-22-04	120	2227697
12-03-04	120	2227798

12-13-04	120	2209515
01-11-05	120	2209591

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

(4) Lino DiMatteo did, on or about December 26, 2004, knowingly possess a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Lino DiMatteo purchased and subsequently possessed 120 tablets of oxycodone, a Schedule II controlled substance, pursuant to a false and/or forged prescription. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.

(5) Lino DiMatteo did, on or about April 21, 2006, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Lino DiMatteo indicated on a terminal distributor application, for which he was to be the Responsible Pharmacist, that he had not been charged or convicted of a crime when in fact he had been charged with Illegal Processing of Drug Documents and Lino DiMatteo pled guilty to Attempted Illegal Processing of Drug Documents. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

(6) On March 7, 2006, Lino DiMatteo pled guilty to one (1) count of Attempted Illegal Processing of Drug Documents, a misdemeanor of the first degree under Section 2923.02 of the Ohio Revised Code. State of Ohio vs. Lino DiMatteo, Case No. 05CR11-7356, Franklin County Common Pleas Court.

(7) On or about December 4, 2006, Lino DiMatteo pled guilty to four (4) counts of Illegal Processing of Drug Documents, felonies of the fourth degree, under Section 2925.23 of the Ohio Revised Code. State of Ohio vs. Lino DiMatteo, Case No. 06-CR-4144, Franklin County Common Pleas Court.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (2) through (7) of the Findings of Fact constitute being guilty of a felony or 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 (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.

(3) The State Board of Pharmacy concludes that paragraph (6) of the Findings of Fact constitutes being convicted of a misdemeanor related to, or committed in, the practice of pharmacy as provided in Division (A)(4) of Section 4729.16 of the Ohio Revised Code.

(4) The State Board of Pharmacy concludes that paragraph (2) through (4) and (7) 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.

(5) The State Board of Pharmacy concludes that paragraph (5) 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 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Lino DiMatteo on December 29, 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 Lino DiMatteo 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. 03-1-26154, held by Lino DiMatteo 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. 03-1-26154, held by Lino DiMatteo 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. 03-1-26154, held by Lino DiMatteo 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. 03-1-26154, held by Lino DiMatteo effective as of the date of the mailing of this Order.

(E) On the basis of the Findings of Fact and paragraph (5) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-26154, held by Lino DiMatteo effective as of the date of the mailing of this Order.

Lino DiMatteo, 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-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 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 1812

cc: Sally Ann Steuk, Assistant Attorney General