

STATE BOARD OF PHARMACY

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THE STATE BOARD OF PHARMACY

VS

ABBE PHARMACY, INC.  
AND  
JOHN B. McCURRY, R.Ph.

THE MATTERS PERTAINING TO THE TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS LICENSE NO. 02-99150 OF ABBE PHARMACY, INC., DOCKET NO. 6-81-3, AND THE REGISTERED PHARMACIST IDENTIFICATION CARD NO. 03-20-4056 OF JOHN B. McCURRY, DOCKET NO. 6-81-2, WERE CONSOLIDATED AND HEARD ON JUNE 25 AND 27, 1984 PURSUANT TO CHAPTERS 119. AND 4729. OF THE REVISED CODE. AFTER CONSIDERATION OF THE EVIDENCE ADDUCED, MOTIONS WERE MADE AND RECORDED THAT THE FOLLOWING ORDER BE ADOPTED:

ORDER

Findings Of Fact

- (1) From the evidence presented, the State Board of Pharmacy finds that, on one or more occasions, between April 23, 1982 and December 16, 1982, sales of a Schedule II controlled substance were made at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, in amounts equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in that, approximately 1,000 tablets of Dilaudid 4mg were sold without a valid prescription; in violation of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, the federal narcotic law as defined in Section 4729.02 of the Revised Code, and Section 2925.03(A)(7) of the Revised Code.
- (2) From the evidence presented, the State Board of Pharmacy finds that, on or about December 30, 1982, a sale of a Schedule II controlled substance was made at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, in an amount equal to or exceeding the bulk amount but less than three times that amount as defined in Section 2925.01 of the Revised Code; in that, approximately 30 tablets of Dilaudid 4mg were sold without a valid prescription; in violation of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, the federal narcotic law as defined in Section 4729.02 of the Revised Code, and Section 2925.03(A)(5) of the Revised Code.
- (3) From the evidence presented, the State Board of Pharmacy finds that, on or about April 23, 1982, a sale of a Schedule II controlled substance was made at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, in an amount equal to or exceeding the bulk amount but less than three times that amount as defined in Section 2925.01 of the Revised Code; in that, approximately 60 tablets of Preludin 75mg were sold without a valid

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prescription; in violation of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, the federal narcotic law as defined in Section 4729.02 of the Revised Code, and Section 2925.03(A)(5) of the Revised Code.

- (4) From the evidence presented, the State Board of Pharmacy finds that, on one or more occasions between September 7, 1982 and December 9, 1982, sales of a Schedule II controlled substance were made at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, in an amount less than the bulk amount as defined in Section 2925.01 of the Revised Code; in that, approximately 180 tablets of Desoxyn 15mg were sold without a valid prescription; in violation of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, the federal narcotic law as defined in Section 4729.02 of the Revised Code, and Section 2925.03(A)(1) of the Revised Code.
- (5) From the evidence presented, the State Board of Pharmacy finds that, on one or more occasions, between May 24, 1982 and December 16, 1982, sales of a Schedule III controlled substance were made at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, in amounts less than the bulk amount as defined in Section 2925.01 of the Revised Code; in that, approximately 112 ounces of Tussionex Suspension were sold without a valid prescription; in violation of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, the federal narcotic law as defined in Section 4729.02 of the Revised Code, and Section 2925.03(A)(1) of the Revised Code.
- (6) From the evidence presented, the State Board of Pharmacy finds that, on one or more occasions between May 24, 1982 and December 16, 1982, sales of a Schedule IV controlled substance were made at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, in amounts less than the bulk amount as defined in Section 2925.01 of the Revised Code; in that, approximately 1,100 tablets of Talwin 50mg were sold without a valid prescription; in violation of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, the federal narcotic law as defined in Section 4729.02 of the Revised Code, and Section 2925.03(A)(1) of the Revised Code.
- (7) From the evidence presented, the State Board of Pharmacy finds that, on or about October 27, 1982, a sale of a Schedule V controlled substance was made at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, in an amount less than the bulk amount as defined in Section 2925.01 of the Revised Code; in that, approximately 8 ounces of Ambenyl was sold without a valid prescription; in violation of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, the federal narcotic law as defined in Section 4729.02 of the Revised Code, and Section 2925.03(A)(1) of the Revised Code.

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- (8) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, as the responsible pharmacist for Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did knowingly possess forged prescriptions, to wit: ten prescriptions for 100 Dilaudid 4mg, one prescription for 30 Dilaudid 4mg, three prescriptions for 60 tablets of Desoxyn 15mg, one prescription for 60 tablets of Preludin 75mg, eleven prescriptions for 100 tablets of Talwin 50mg, six prescriptions for 16 ounces of Tussionex Suspension, two prescriptions for 8 ounces of Tussionex Suspension, and one prescription for 8 ounces of Ambenyl; in violation of Section 2925.23(B) of the Revised Code.
- (9) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between November 22, 1982 and January 7, 1983, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 90 tablets of Preludin 75mg within a period of 47 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(5) of the Revised Code.
- (10) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between September 15, 1981 and December 28, 1981, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 560 tablets of Preludin 75mg within a period of 105 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(7) of the Revised Code.
- (11) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between July 30, 1982 and September 7, 1982, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 300 tablets of Preludin 75mg within a period of 40 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(7) of the Revised Code.
- (12) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between August 28, 1981 and April 15, 1983, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 540 tablets of Preludin 75mg within a period of 596 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(5) of the Revised Code.
- (13) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between September 1, 1981 and April 21, 1983, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid

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prescription given by a practitioner, approximately 480 tablets of Preludin 75mg within a period of 589 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(5) of the Revised Code.

- (14) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between September 18, 1981 and December 3, 1982, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 390 tablets of Preludin 75mg within a period of 432 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(5) of the Revised Code.
- (15) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between April 27, 1982 and November 18, 1982, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 240 tablets of Preludin 75mg within a period of 174 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(5) of the Revised Code.
- (16) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between September 28, 1982 and November 23, 1982, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 180 tablets of Preludin 75mg within a period of 58 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(5) of the Revised Code.
- (17) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between January 5, 1982 and April 7, 1983, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 780 tablets of Preludin 75mg within a period of 457 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(5) of the Revised Code.
- (18) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between August 21, 1981 and February 20, 1982, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 180 tablets of Preludin 75mg within a period of 184 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(5) of the Revised Code.

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- (19) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between December 7, 1982 and April 1, 1983, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 120 tablets of Preludin 75mg within a period of 87 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(5) of the Revised Code.
- (20) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between September 24, 1982 and December 9, 1982, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 120 tablets of Preludin 75mg within a period of 77 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(5) of the Revised Code.
- (21) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between November 5, 1982 and January 31, 1983, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 120 capsules of Biphetamine 20mg within a period of 87 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(5) of the Revised Code.
- (22) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between October 26, 1982 and December 28, 1982, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 90 capsules of Biphetamine 20mg within a period of 64 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(5) of the Revised Code.
- (23) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between August 18, 1981 and March 15, 1983, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 820 capsules of Biphetamine 20mg within a period of 576 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(5) of the Revised Code.
- (24) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between August 3, 1981 and February 28, 1983, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 1,000 capsules of Biphetamine 20mg within a period of 576 days, a Schedule II controlled substance; in violation of Section 2925.03(A)(5) of the Revised Code.



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of Preludin 75mg and 210 tablets of Percodan, both of which are Schedule II controlled substances; in violation of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, the federal narcotic law as defined in Section 4729.02 of the Revised Code, and Division (A) of Section 2925.03 of the Revised Code.

- (31) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between October 25, 1982 and December 9, 1982, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did dispense, without a valid prescription given by a practitioner, approximately 150 tablets of Talwin 50mg, a Schedule IV controlled substance and prescription drug; in violation of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, the federal narcotic law as defined in Section 4729.02 of the Revised Code, and Division (A) of Section 2925.03 of the Revised Code.
- (32) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, on one or more occasions between March 26, 1982 and February 11, 1983, at Abbe Pharmacy, Inc., 475 N. Abbe Road, Elyria, Ohio 44035, did distribute by dispensing Schedule II and Schedule IV controlled substances when he knew, or had reasonable cause to believe, such drugs were intended for sale or resale by another person and were not prescribed for legitimate medical purposes by a practitioner in the course of his professional practice, to wit: prescriptions issued by Edward L. McIver, M.D. for controlled substances and dangerous drugs subject to abuse for patients residing in Mahoning County, Ohio.
- (33) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, as the president of the corporation which owns Abbe Pharmacy, Inc. and the responsible pharmacist, did not keep a record of all controlled substances received or dispensed; in violation of the provisions of Sections 3719.07 and 4729.37 of the Ohio Revised Code, Rules 4729-5-17 and 4729-9-14 of the Ohio Administrative Code, and the federal narcotic law as defined in Section 4729.02 of the Revised Code.
- (34) From the evidence presented, the State Board of Pharmacy finds that John B. McCurry, as the president of the corporation which owns Abbe Pharmacy, Inc. and the responsible pharmacist, did display hypodermics for sale; in violation of Division (B) of Section 3719.172 of the Revised Code.

Conclusions Of Law

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (1) through (32) of the Findings Of Fact constitutes gross immorality within the meaning of Section 4729.16(A) of the Revised Code.

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- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (1) through (27) and (29) through (32) of the Findings Of Fact constitutes willfully violating more than one time the provisions of Chapters 2925., 3715., 3719., and 4729. of the Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraph (33) of the Findings Of Fact constitutes violations of Rules 4729-5-17 and 4729-9-14 of the Administrative Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraph (33) of the Findings Of Fact constitutes violations of the provisions of Chapter 4729. of the Revised Code.
- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (1) through (7), (9) through (27), (30), and (31) of the Findings Of Fact constitutes violations of the provisions of the "Federal Food, Drug, and Cosmetic Act," 32 Stat. 1040 (1938), 21 U.S.C.A. 301, and Chapter 3715. of the Revised Code.
- (6) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (1) through (25), (27), and (30) through (34) of the Findings Of Fact constitutes violations of the provisions of the federal narcotic law as defined in Section 4729.02 of the Revised Code, and Chapters 2925. and 3719. of the Revised Code.

Pursuant to Sections 4729.16 and 4729.57 of the Ohio Revised Code, and the foregoing Findings Of Fact and Conclusions Of Law, the State Board of Pharmacy takes the following actions concerning the registered pharmacist license of John B. McCurry, No. 03-20-4056, and the terminal distributor of dangerous drugs license held by Abbe Pharmacy, Inc., No. 02-99150:

- (A) On the basis of paragraph (1) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card held by John B. McCurry.
- (B) On the basis of paragraph (2) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card held by John B. McCurry.
- (C) On the basis of paragraph (3) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor of dangerous drugs license held by Abbe Pharmacy, Inc.
- (D) On the basis of paragraph (4) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor of dangerous drugs license held by Abbe Pharmacy, Inc.

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(E) On the basis of paragraph (5) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor of dangerous drugs license held by Abbe Pharmacy, Inc.

(F) On the basis of paragraph (6) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor of dangerous drugs license held by Abbe Pharmacy, Inc.

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

MOTION CARRIED.

SO ORDERED.

(08/02/84)