



OHIO STATE BOARD OF PHARMACY

77 S. High Street, 17th Floor
Columbus, Ohio 43266-0320
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THE STATE BOARD OF PHARMACY
(Docket No. D-890901-035)

In The Matter Of:

MARK L. WEINER, R.Ph.
Inmate No. 207920
Hocking Correctional Institute
P.O. Box 59
Nelsonville, Ohio 45764
(R.Ph. No. 03-2-06101)

INTRODUCTION

THE MATTER OF MARK L. WEINER CAME TO HEARING ON JANUARY 23, 1990 BEFORE THE FOLLOWING MEMBERS OF THE BOARD: TIMOTHY MOORE, R.Ph. (presiding); GERALD CLOUSE, R.Ph.; NORMAN LEIBOW, R.Ph.; BETTY NICHOL, R.Ph.; AND ROBERT VALENTINE, R.Ph.

MARK L. WEINER WAS NOT PRESENT NOR REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY STEVE DLOTT, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) George Pavlich - Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit A - Notice of Opportunity letter dated September 1, 1989.
- (2) Exhibit B - Returned Certified Mail Envelope received September 13, 1989.
- (3) Exhibit C - Returned Certified Mail Card signed by D. Cooper dated September 15, 1989.
- (4) Exhibit D - Hearing Schedule letter dated October 19, 1989.

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- (5) Exhibit 1 - Responsible Registered Pharmacist card for Sid's Get It For Less #1702 from March 1, 1986 through July 13, 1987, and Terminal Distributor of Dangerous Drugs Renewal Application for Sid's Get It For Less #1702 for 1987.
- (6) Exhibit 2 - Report of Investigation for Case No. 02-05-1099 dated July 24, 1987; Accountability Statement from Sid's Get It For Less for Dilaudid 4mg; Accountability Statement from Sid's Get It For Less for Ritalin 20mg; Accountability Statement from Sid's Get It For Less for Percodan; Accountability Statement from Sid's Get It For Less for Percocet; Accountability Statement from Sid's Get It For Less for Tylox; Accountability Statement from Sid's Get It For Less for Tuinal 200mg; Accountability Statement from Sid's Get It For Less for Seconal 100mg; Accountability Statement from Sid's Get It For Less for Preludin 75mg; Accountability Statement from Sid's Get It For Less for Dilaudid 2mg; and Accountability Statement from Sid's Get It For Less for Ritalin 5mg.
- (7) Exhibit 3 - Report of Investigation for Case No. 02-05-1099 dated July 28, 1987, and seven-page Affidavit from Mark L. Weiner dated July 28, 1987.
- (8) Exhibit 4 - Prescriptions numbered 003593, 006602, 007144, 002018, 008445, 012715, 011887, 011185, 015202, 004940, 014967, 016194, and four-page Statement from Dr. Tom Shemory, M.D.
- (9) Exhibit 5 - Prescription 016943, and Statement from Dr. T. F. Sinclair, D.M.D.
- (10) Exhibit 6 - Prescription 005958, and Statement from Dr. L. E. Cohen, M.D.
- (11) Exhibit 7 - One prescription and Statement from Dr. Rafael E. Arsuaga, M.D.
- (12) Exhibit 8 - Prescription 006145, and Statement from Dr. Marvin R. Boren, D.P.M.
- (13) Exhibit 9 - Prescription 013746, and Statement from Dr. George W. Kmetz, M.D.
- (14) Exhibit 10 - Prescriptions numbered 011785, 005812, 010784, 016173, 006277, 006734, and two-page Statement from Dr. Mark S. Perlmutter, M.D.
- (15) Exhibit 11 - Prescriptions numbered 008439, 006904, 008287, 012281, 009741, 007031, 009690, 011990, and three-page Statement from Dr. Luis M. Palomar, M.D.
- (16) Exhibit 12 - Prescriptions numbered 014032, 013343, 008134, 012912, and two-page Statement from Dr. James F. McCutcheon, M.D.
- (17) Exhibit 13 - Prescriptions numbered 017343, 016623, and Statement from Dr. F. K. Abbousy, M.D.
- (18) Exhibit 14 - Certified copy of Criminal Docket proceeding showing prior criminal conviction of a felony offense. CR71-825 and CR72-103.
- (19) Exhibit 15 - Certified copy of the Stark County Court of Common Pleas Judgment Entry 87-7535 showing plea, criminal conviction, and sentence for Mark Weiner.

Respondent's Exhibits:

- (1) Exhibit 1 - Letter from Mark Weiner dated October 10, 1989.

FINDINGS OF FACT

- (1) From the evidence presented, the State Board of Pharmacy finds that the records of the Board of Pharmacy reflect the fact that Mark Weiner has been the responsible pharmacist pursuant to Section 4729.27 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code, and as required by Ohio Revised Code Section 4729.55, for Terminal Distributor of Dangerous Drugs License No. 02-455750 since March 15, 1986, and that he was actively engaged in the practice of pharmacy at this location since that date.
- (2) From the evidence presented, the State Board of Pharmacy finds that Mark Weiner did, between March 1, 1986 and July 13, 1987, while practicing pharmacy at Sid's Get It For Less, 4685 Fulton Road, Canton, Ohio 44718, Terminal Distributor of Dangerous Drugs License No. 02-455750, knowingly sell or offer to sell a controlled substance in an amount equal to or exceeding three times the bulk amount when his conduct was not in accordance with Chapters 3719. and 4729. of the Ohio Revised Code, to wit: Mark Weiner sold the following Schedule II drugs in the following amounts:

<u>Drug</u>	<u>Approximate Amount</u>
Dilaudid 4mg	2,101 tablets
Ritalin 20mg	533 tablets
Percodan	493 tablets
Percocet	421 tablets
Tylox	101 capsules
Tuinal 200mg	164 capsules
Seconal 100mg	133 capsules
Preludin 75mg	100 tablets

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (3) From the evidence presented, the State Board of Pharmacy finds that Mark Weiner did, between March 1, 1986 and July 13, 1987, while practicing pharmacy at Sid's Get It For Less, 4685 Fulton Road, Canton, Ohio 44718, knowingly sell or offer to sell a controlled substance in an amount equal to or exceeding the bulk amount but in an amount less than three times that amount when his conduct was not in accordance with Chapters 3719. and 4729. of the Ohio Revised Code, to wit: Mark Weiner sold approximately 160 tablets of Dilaudid-2mg, a Schedule II controlled substance. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.
- (4) From the evidence presented, the State Board of Pharmacy finds that Mark Weiner did, between March 1, 1986 and July 13, 1987, while practicing pharmacy at Sid's Get It For Less, 4685 Fulton Road, Canton, Ohio 44718, knowingly sell or offer to sell a controlled substance in an amount less than the minimum bulk

amount when his conduct was not in accordance with Chapters 3719. and 4729. of the Ohio Revised Code, to wit: Mark Weiner sold approximately 191 tablets of Ritalin-5mg, a Schedule II controlled substance. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.

- (5) From the evidence presented, the State Board of Pharmacy finds that Mark Weiner did, while practicing pharmacy at Sid's Get It For Less, 4685 Fulton Road, Canton, Ohio 44718, intentionally make or knowingly possess false or forged prescriptions, to wit:

<u>Prescription Number</u>	<u>Date Altered</u>	<u>Original Quantity</u>	<u>Altered Quantity</u>	<u>Drug</u>
002384	05/07/86	30	50	Dilaudid-4mg
003593	08/18/86	84	184	Dilaudid-4mg
004940	10/07/86	52	82	Dilaudid-4mg
005812	10/31/86	200	280	Percocet
005958	11/07/86	60	160	Dilaudid-4mg
006145	11/12/86	20	120	Percodan
006277	11/14/86	200	280	Percocet
006602	11/24/86	84	184	Dilaudid-4mg
006734	11/26/86	200	280	Percocet
007144	12/08/86	84	184	Dilaudid-4mg
008445	01/05/87	84	184	Dilaudid-4mg
None	01/14/87	20	70	Percocet
010784	02/23/87	200	280	Percocet
011185	03/03/87	84	184	Dilaudid-4mg
011785	03/13/87	100	180	Percocet
011887	03/16/87	84	184	Dilaudid-4mg
012715	03/31/87	42	142	Dilaudid-4mg
013746	04/21/87	30	130	Percodan
014967	05/14/87	120	420	Dilaudid-4mg
015202	05/19/87	90	190	Dilaudid-4mg
016173	05/29/87	200	300	Percocet
016194	06/08/87	120	420	Dilaudid-4mg
016943	06/19/87	12	62	Percodan

Such conduct is prohibited by Section 2925.23(B)(1) of the Ohio Revised Code.

- (6) From the evidence presented, the State Board of Pharmacy finds that Mark Weiner did, between December 2, 1986 and June 29, 1987, knowingly sell or offer to sell a controlled substance in an amount equal to or exceeding three times the bulk amount when his conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Mark Weiner did dispense Preludin-75mg, a Schedule II controlled stimulant, in the following amounts pursuant to the following invalid prescriptions:

<u>Prescription Number</u>	<u>Date Dispensed</u>	<u>Quantity Dispensed</u>
006904	12/02/86	36
007031	12/05/86	36
008134	12/29/86	30
008287	01/02/87	36
008439	01/06/87	36
009741	01/30/87	50
009690	02/03-87	36
011990	03/17/87	15
012281	03/23/87	14
012912	04/03/87	14
013343	04/13/87	14
014032	04/27/87	14
016623	06/15/87	14
017343	06/29/87	14

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (7) From the evidence presented, the State Board of Pharmacy finds that Mark Weiner was, on or about February 17, 1972, convicted of Unlawfully Distributing Drugs in violation of Title 21 of the United States Code, Section 842(a)(1), before the Honorable Judge Krupansky, United States District Court, Northern District Court of Ohio, whereupon he was fined \$7,500 and placed on probation for one year.
- (8) From the evidence presented, the State Board of Pharmacy finds that Mark Weiner was, on or about November 29, 1988, convicted in the Stark County Common Pleas Court of Theft of Drugs, a felony, in violation of Section 2925.21(A) of the Ohio Revised Code and Aggravated Trafficking, a felony, in violation of Section 2925.03(A)(6) of the Ohio 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 (2) through (8) of the Findings Of Fact constitutes being guilty of a felony and gross immorality as provided in division (A)(1) 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 the conduct set forth in paragraphs (2) through (8) of the Findings Of Fact constitutes 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) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (2) through (6) and (8) of the Findings Of Fact constitutes willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code as provided in division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ORDER

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions concerning the pharmacist license, No. 03-2-06101, held by Mark L. Weiner:

(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 Mark L. Weiner.

(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 Mark L. Weiner.

(C) On the basis of paragraph (3) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card held by Mark L. Weiner.

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part that: "Any individual whose identification card is revoked, ..., 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.

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 Revised Code authorizes an appeal from this Order. Such an appeal may be taken to the court of common pleas in the county in which your place of business is located or to said court of the county in which you reside. If you do not have a place of business in Ohio and are not a resident of Ohio, you may appeal to the Court of Common Pleas in Franklin County, Ohio.

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Such an appeal, setting forth the order appealed from and the grounds of the appeal, must be commenced by the filing of a Notice of Appeal with the State Board of Pharmacy and the appropriate court within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

CERTIFIED MAIL
Return Receipt
#P 497 578 686

ORDER MAILED: MARCH 19, 1990

FZW/pw

By Franklin Z. Wickham
Franklin Z. Wickham, Executive Director

cc: Steve Dlott, Assistant Attorney General