

THE STATE BOARD OF PHARMACY

VS

ROGER J. COMMISSO, R.Ph.

AND

NEVEL REXALL DRUG, INC. dba LODOLYN PRESCRIPTION REXALL DRUG

THE MATTERS PERTAINING TO THE REGISTERED PHARMACIST IDENTIFICATION CARD OF ROGER J. COMMISSO, R.Ph. NO. 03-20-6222, DOCKET NO. 6-62-2, AND THE TERMINAL DISTRIBUTOR LICENSE HELD BY NEVEL REXALL DRUG, INC., TERMINAL DISTRIBUTOR NO. 02-091250, DOCKET NO. 6-62-1, WERE CONSOLIDATED AND HEARD PURSUANT TO CHAPTERS 119. AND 4729. OF THE REVISED CODE. AFTER CONSIDERATION OF THE EVIDENCE ADDUCED, MOTION WAS MADE AND RECORDED THAT THE FOLLOWING ORDER BE ADOPTED:

ORDER

Findings of Fact

- (1) From the evidence presented, the State Board of Pharmacy finds Roger J. Commisso is the President of Nevel Rexall Drug, Inc., an Ohio corporation doing business as Lodolyn Prescription Rexall Drug, 14801 Madison, Lakewood, Ohio 44107, and is the responsible pharmacist, as required by Section 4729.55 of the Revised Code, for Lodolyn Prescription Rexall Drug, Terminal Distributor of Dangerous Drugs License No. 02-091250.
- (2) From the evidence presented, the State Board of Pharmacy finds Roger J. Commisso, as the responsible pharmacist for Lodolyn Prescription Rexall Drug, did dispense between the dates of May 1, 1981 and February 16, 1983, without a written or oral prescription, a quantity of approximately 47,572 tablets of Percodan, approximately 8,004 tablets of Demerol 100mg, approximately 6,537 capsules of Biphedamine 20mg, approximately 6,097 capsules of Tuinal 3gr, approximately 3,691 tablets of Preludin 75mg, and approximately 1,172 tablets of Demerol 50mg; all of which are Schedule II controlled substances and prescription drugs, in amounts equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of the federal narcotic law as defined in Section 4729.02 of the Revised Code, the Federal Food, Drug, and Cosmetic Act, Section 2925.03(A)(7) and Chapters 3715., 3719., and 4729. of the Revised Code.
- (3) From the evidence presented, the State Board of Pharmacy finds Roger J. Commisso, as the responsible pharmacist for Lodolyn Prescription Rexall Drug, did dispense between the dates of May 1, 1981 and February 16, 1983, without a written or oral prescription, approximately 17,880 tablets of Talwin 50mg, a Schedule IV controlled substance and prescription drug, in an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of

the federal narcotic law as defined in Section 4729.02 of the Revised Code, the Federal Food, Drug, and Cosmetic Act, Section 2925.03(A)(7) and Chapters 3715., 3719., and 4729. of the Revised Code.

- (4) From the evidence presented, the State Board of Pharmacy finds Roger J. Commisso, as the responsible pharmacist for Lodolyn Prescription Rexall Drug, did knowingly possess 80 false and forged prescriptions for 9,240 tablets of Percodan at Lodolyn Prescription Rexall Drug, 14801 Madison, Lakewood, Ohio 44107; in violation of Section 2925.23(B)(1) of the Revised Code.
- (5) From the evidence presented, the State Board of Pharmacy finds Roger J. Commisso, as the responsible pharmacist for Lodolyn Prescription Rexall Drug, did dispense between the dates of February 26, 1980 and March 2, 1983, without a valid prescription, approximately 8,270 tablets of Percodan, a Schedule II controlled substance and prescription drug, in an amount equal to or exceeding the bulk amount but in an amount less than three times that amount as defined in Section 2925.01 of the Revised Code; in violation of the federal narcotic law as defined in Section 4729.02 of the Revised Code, the Federal Food, Drug, and Cosmetic Act, Section 2925.03(A)(5) and Chapters 3715., 3719., and 4729. of the Revised Code.
- (6) From the evidence presented, the State Board of Pharmacy finds Roger J. Commisso, as the responsible pharmacist for Lodolyn Prescription Rexall Drug, did dispense on one or more occasions between April 6, 1982 and December 30, 1982, without a valid prescription, approximately 970 tablets of Percodan, a Schedule II controlled substance and prescription drug, in an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of the federal narcotic law as defined in Section 4729.02 of the Revised Code, the Federal Food, Drug, and Cosmetic Act, Section 2925.03(A)(7) and Chapters 3715., 3719., and 4729. of the Revised Code.
- (7) From the evidence presented, the State Board of Pharmacy finds Roger J. Commisso, as the responsible pharmacist for Lodolyn Prescription Rexall Drug, did on one or more occasions between November 8, 1982 and December 29, 1982 knowingly make a false statement in prescription records required by Chapter 3719. of the Revised Code, to wit: prescriptions numbered N-271286, N-271405, N-271546, N-271664, and N-271893; in violation of Section 2925.23(A) of the Revised Code.
- (8) From the evidence presented, the State Board of Pharmacy finds Roger J. Commisso, as the responsible pharmacist for Lodolyn Prescription Rexall Drug, did cause on or about March 10, 1983 the misbranding of drugs held for sale; in that, he repackaged samples of Indocin 40mg in a stock bottle in the presence of Pharmacy Board Investigator Robert L. Cole and Compliance Inspector Kevin Ousley; in violation of Section 3715.52(B) of the Revised Code.

- (9) From the evidence presented, the State Board of Pharmacy finds Roger J. Commisso, as the responsible pharmacist and president of the corporation which owns Lodolyn Prescription Rexall Drug, 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 Revised Code, and Rules 4729-5-17 and 4729-9-14 of the Ohio Administrative Code.
- (10) From the evidence presented, the State Board of Pharmacy finds that Nevel Rexall Drug, Inc., owner of Lodolyn Prescription Rexall Drug, on one or more occasions, did not keep records required by the provisions of the federal narcotic law as defined in Section 4729.02 of the Revised Code, to wit: a biennial inventory of controlled substances that should have been taken in 1979 and 1981 as required by Section 1304.13 of Title 21 of the Code of Federal Regulations, and the maintenance of official written order forms as required by Section 1305.09(e) of Title 21 of the Code of Federal Regulations.
- (11) From the evidence presented, the State Board of Pharmacy finds Roger J. Commisso, as the responsible pharmacist for Lodolyn Prescription Rexall Drug, did knowingly possess 172 false and forged prescriptions for 17,100 tablets of Talwin 50mg; in violation of Section 2925.23(B)(1) of the Revised Code.
- (12) From the evidence presented, the State Board of Pharmacy finds Roger J. Commisso, as the responsible pharmacist for Lodolyn Prescription Rexall Drug, did dispense on one or more occasions between the dates of February 15, 1982 and September 25, 1982, without a valid prescription, approximately 17,100 tablets of Talwin 50mg, a Schedule IV controlled substance and prescription drug, in an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of Section 2925.03(A)(7) and Chapters 3715., 3719., and 4729. of the Revised Code.
- (13) From the evidence presented, the State Board of Pharmacy finds Roger J. Commisso, as the responsible pharmacist for Lodolyn Prescription Rexall Drug, did knowingly possess 193 false and forged prescriptions for 19,210 tablets of Percodan at Lodolyn Prescription Rexall Drug, 14801 Madison, Lakewood, Ohio 44107; in violation of Section 2925.23(B)(1) of the Revised Code.
- (14) From the evidence presented, the State Board of Pharmacy finds Roger J. Commisso, as the responsible pharmacist for Lodolyn Prescription Rexall Drug, did dispense on one or more occasions between January 9, 1982 and September 24, 1982, without a valid prescription, approximately 19,210 tablets of Percodan, a Schedule II controlled substance and prescription drug, in an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code; in violation of the Federal Food, Drug, and Cosmetic Act, Section 2925.03(A)(7) and Chapters 3715., 3719., and 4729. 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 (2) through (14) of the Findings of Fact constitutes gross immorality within the meaning of Section 4729.16(A) of the 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), and (11) through (14) of the Findings of Fact constitutes willful violations of more than one time any of 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 (9) of the Findings of Fact constitutes violations of Chapters 3719. and 4729. of the Ohio Revised Code, and Rules 4729-5-17 and 4729-9-14 of the Ohio Administrative Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (2), (3), (5), (6), (8), and (14) of the Findings of Fact constitutes violations of the provisions of the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040 (1938), 21 U.S.C.A. 301, and Chapter 3715. of the Ohio Revised Code.
- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (2), (3), (5), (6), and (10) of the Findings of Fact constitutes violations of the provisions of the federal narcotic law, and Chapters 2925. and 3719. 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 paragraph (8) of the Findings of Fact constitutes violations of the provisions of the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040 (1938), 21 U.S.C.A. 301, and Chapter 3715. of the Revised Code.
- (7) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (4), (7), (12), and (13) of the Findings of Fact constitutes violations of Chapter 2925. 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 Roger J. Commisso, No. 03-20-6222, and the Terminal distributor license held by Nevel Rexall Drug, Inc., No. 02-091250:

- (A) On the basis of paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the registered pharmacist identification card held by Roger J. Commisso.

(B) On the basis of paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the registered pharmacist identification card held by Roger J. Commisso.

(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 Nevel Rexall Drug, Inc., No. 02-091250.

(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 Nevel Rexall Drug, Inc., No. 02-091250.

(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 Nevel Rexall Drug, Inc., No. 02-091250.

(F) On the basis of paragraph (6) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes on Nevel Rexall Drug, Inc. a monetary penalty of two thousand dollars (\$2,000.00).

(G) On the basis of paragraph (7) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor of dangerous drugs license held by Nevel Rexall Drug, Inc., No. 02-091250.

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

MOTION CARRIED.

SO ORDERED.